

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

a/k/a "Akhbar Farhad"

a/k/a "Akhbar Farnad"

a/k/a "Ahmed Muhammed Khali"

SUPPRESSION MOTIONS

D-094

D-111

RULING

1. The Defense moves to suppress certain statements made by the accused as set out in its briefs submitted in support of D094. The Defense alleges such statements are the product of torture, involuntary, unreliable, do not serve the interest of justice, and are fruit of the poisonous tree. Their admission, the defense further alleges, is prohibited under §948r of the Military Commissions Act of 2009 (MCA) and Military Commissions Rule of Evidence (M.C.R.E.) 304. The Defense also moves to suppress the videotape found at the compound where the firefight occurred as set out in its brief submitted in support of D-111. The Defense alleges the videotape was found only as a result of statements obtained improperly from the accused. The Government opposes both motions.

2. The Commission has considered the briefs, the witnesses' testimony, all the other evidence offered during the suppression hearing, and the oral arguments and finds as follows:

a. The accused engaged in a firefight with U.S. forces in Khost, Afghanistan, on 27 July 2002. The accused was severely wounded during the course of the firefight and was captured after the firefight ended. The U.S. forces treated the accused at the scene and transported him to Bagram Airfield, Afghanistan, where U.S. medical personnel operated on the accused and saved his life. The accused received world class medical care from the time he was captured and continues to receive the same world class medical care throughout his detention.

b. The accused was 15 years old at the time of his capture. The accused received limited formal education and received some home schooling prior to his capture; however, the accused speaks several languages, including English. The accused speaks English well enough that he did not need an interpreter to communicate effectively with U.S. forces, U.S. medical personnel, or any other U.S. personnel. At times the accused would volunteer to help translate for U.S. personnel and other detainees.

c. The accused alleges in his affidavit that he was mistreated while he was in the hospital in Bagram. The overwhelming credible evidence is that the accused was not mistreated while he was in the hospital in Bagram. The accused was treated

professionally and humanely during his entire stay in the hospital in Bagram which included more than one surgery for the wounds he suffered during the firefight. An ophthalmologist, Dr. [REDACTED] flew to Bagram from Kuwait for the sole purpose of operating on the accused's eyes. Dr. [REDACTED] detected no signs of abuse or mistreatment of the accused. The accused made no complaints to her of any mistreatment. There is no evidence which in any way supports the accused's allegations of mistreatment while he was a patient at the Bagram hospital. Detainees were not allowed to be interrogated while hospitalized without approval by a doctor and then interrogators were only allowed to ask basic identifying information. There is no credible evidence this rule was violated.

d. Interrogator #2 interviewed the accused at Bagram one time on 12 August 2002. The accused had been medically cleared to be interviewed. That interview lasted about 90 minutes and was in the afternoon. The accused was not wearing a hood over his head. No dogs were present during the interview. The accused was on a stretcher during the interview. The accused appeared to be tired at one point, but he never complained about being in pain. The accused appeared to understand what was happening. No one yelled at, threatened, or otherwise abused the accused during the interview. The accused gave a false name and said he was from Pakistan. The accused said nothing about being a Canadian citizen. The accused talked about being on a mission as a translator. The accused was not abused in any way during that interview.

e. Mr. "M", a combat medic, was the noncommissioned officer in charge for medical care for detainees at the Bagram detention facility from 17 August 2002 to late February 2003. Mr. "M" met the accused while performing his duties as a medic. The detainees received the same level of medical care as U.S. and allied military forces. Mr. "M" regularly changed the dressing on the accused's wounds. He saw the accused at least twice each day. The accused's wounds on his chest and back appeared to be healing quickly. The accused was very cooperative and volunteered to help with translation with other detainees because the accused spoke English very well. He never saw any indication that the accused was mistreated when his bandages were changed. The accused never complained to him about any mistreatment. The accused exhibited no signs of fresh wounds or that he was forced to urinate on himself as he alleges in his affidavit. Mr. "M" saw no signs the accused had been physically abused. He did not think the accused was physically unfit to be interrogated. The Commission specifically finds no evidence which supports the accused's allegations he was medically mistreated while at the Bagram detention center or elsewhere.

f. Mr. "M" saw the accused handcuffed to a bar in the sally port of his cell one time. The accused's hands were slightly above eye level with a hood on his head. The accused seemed stressed but did not complain about being in any pain. The accused said this treatment was unfair and he was no longer willing to help with translation with other detainees. There is no evidence the accused made any statements to any interrogator in response to being handcuffed in the sally port of his cell. Mr. "M" saw the accused on the day he was to be transported to GTMO. The accused looked emotional and scared. The accused told Mr. "M" that what he had been told about the Americans was wrong, implying that he had been told American forces would mistreat him.

g. Mr. [REDACTED] was an interrogator who worked at the Bagram detention center while the accused was detained there. He was present during the normal in-process screening of the accused at the Bagram hospital, but he was not present during any interrogations of the accused. There is no evidence the accused was threatened or in any way mistreated during the normal in-process screening. Mr. [REDACTED] talked to the accused several times after the accused had been released from the hospital and was being held at the detention facility, though this was not during any interrogations of the accused. The accused seemed like a typical 15-year-old. Mr. [REDACTED] had a soft spot for the accused and would provide him with books, magazines, and drinks. Mr. [REDACTED] said that people were generally friendlier with the accused than other detainees because of the accused's age. The accused never mentioned anything to Mr. [REDACTED] about being threatened, abused, or mistreated.

h. Interrogator #17 worked at the Bagram detention facility from the fall of 2002 to early 2003. He did not interrogate the accused, and he did not witness any interrogation of the accused while the accused was at the Bagram detention center. He did not talk to anyone about the accused while the accused was at the Bagram detention center, though he knew the accused was a young detainee from Canada. The interrogators took precautions with younger detainees so no one would take advantage of them. He thought the accused was somewhat immature in the way he communicated and because of his interest in car magazines. Interrogator #17 remembers two specific interactions with the accused while at the Bagram detention center. While a doctor was treating the accused, the accused asked some questions and seemed in good spirits. Another time Interrogator #17 remembers seeing the accused and the accused started a conversation with him. The accused seemed more westernized than the other detainees. Interrogator #17 said the guards looked out for the accused because of his age and wounds. It appeared to him the accused became healthier as time passed. He never saw the accused crying, shackled, or wearing a hood over his head. He never heard of any allegations of abuse towards the accused.

i. Interrogator #1 was the lead interrogator for the accused while the accused was at the Bagram detention center. He interrogated the accused 20-25 times. He always interrogated the accused in an interrogation room. He never interrogated the accused in the hospital. He used a "fear up" technique as a last resort with the accused. It is a technique used to attempt to raise the fear level of the detainee. He, at times, used a harsh tone of voice with the accused by yelling and cursing at the accused if he caught the accused in what he thought were lies. The accused told him he did not like the cursing and stopped talking to Interrogator #1 at one point because of the cursing. Interrogator #1 one time "got into the accused's face" by yelling at him and flipping a bench so it made a loud noise. The "fear up" technique included the use of stress positions on detainees who were healthy enough to endure that technique. Interrogator #1 never used the stress position technique on the accused. He never inflicted pain on or tried to injure the accused. He never used any dogs while interrogating the accused.

j. During one of the interrogations, Interrogator #1 told the accused a fictitious story about a detainee, an Afghan male, who lied to interrogators and was sent to a US prison for lying. There were "big, black guys" in the prison. The Afghan male was a kid away from home who they could not protect. The Afghan male got hurt when the "big, black guys" raped him in the showers. This fictitious story was unsuccessful in obtaining information from the accused. The "fear up" technique was also not successful in obtaining information from the accused.

k. Interrogator #1 used other types of techniques on the accused, such as "love of freedom" and "pride/ego down." These were attempts to gather information through appealing to a person's desire to go home or implying that he was not really an important person and attempting to get him to talk about the people who really were important. He also used "fear of incarceration" as a technique. It was used in an attempt to gain cooperation in order to return to a normal life rather than being detained. These techniques did not amount to torture or abuse of the accused.

l. Guards would move detainees, to include the accused, with a hood over their heads. However, Interrogator #1 never interrogated the accused while he had a hood over his head. Interrogator #1 never threw cold water on the accused. He never bound the accused's hands to the ceiling and made him stand. He never made the accused carry heavy water bottles. He never used bright lights with the accused. He never tied a bag over the accused's head. He never pulled or yanked the accused off a stretcher.

m. The accused never told Interrogator #1 that there was a videotape (Appellate Exhibit (AE) 188 remarked as AE 230) in the house where the firefight took place. However, Interrogator #1 eventually obtained a copy of the videotape found in the house where the firefight took place. After he showed that videotape to the accused, the accused appeared somewhat shaken. The accused said that "the Americans know all." There was a dramatic change to the accused's cooperation after he saw the videotape. It was the use of the videotape which was successful in obtaining information from the accused rather than the other techniques used by Interrogator #1.

n. FBI Special Agent [REDACTED] and Interrogator #11 interviewed the accused several times together from 1 October 2002 to 11 November 2002 at Guantanamo Bay, Cuba (hereinafter referred to as GTMO). Interrogator #11 had the lead during those interviews.

o. Two of the interviews by SA [REDACTED] and Interrogator #11 took place while the accused was in the Fleet hospital shortly after his arrival at GTMO. At the Fleet hospital the accused was on a gurney wearing a typical hospital gown in a typical hospital ward setting. Interrogator #11 always received medical clearance prior to interviewing the accused at the Fleet hospital. Neither Interrogator #11 nor SA [REDACTED] ever threatened, yelled at, or otherwise used any coercive techniques when talking to the accused at the hospital or any other location.

p. The other interviews took place in the normal interview rooms. The accused never wore a hood during any of the interviews. The interviews took place during the

day, never at night, and there were no multiple interviews on the same day. The interview might last an hour but never more than 5 or 6 hours. Interrogator #11 and SA [REDACTED] engaged in relaxed conversation with the accused. The accused was always willing to talk. The accused did not appear disoriented and exhibited no signs of distress. The accused never complained of any prior mistreatment at the hands of U.S. personnel. He never complained about any threat of being raped.

q. Guards escorted the accused to the interview rooms in shackles. The accused was not wearing a hood over his head. During the interview the accused had on leg shackles but no hand shackles. No loud noise was made and no music was played. No dogs were used. No threats were made. No stress positions were used. No loud voices were used. The tone was conversational. They offered the accused water and snacks. The accused said he attended schools but was also homeschooled. The accused never mentioned any issues with nightmares or problems with sleeping. Neither SA [REDACTED] nor Interrogator #11 learned of the allegations of abuse the accused had made until each read the accused's affidavit long after each had interviewed the accused.

r. The accused provided much detail, particularly about the firefight, normally in a narrative fashion. He was fairly certain about the time on a couple of occasions because he remembered looking at his watch during the firefight. If Interrogator #11 was incorrect when she summarized what the accused said, he would correct her. The only mention he made of his eye was that the medical personnel were trying to fix it. He did not complain of pain in his eye.

s. The accused told Interrogator #11 that he lied to interrogators at Bagram until they showed him videotape found at the scene of the firefight. He said the Americans were smart and had caught him in lies so he started to tell the truth.

t. FBI Special Agent [REDACTED] interviewed the accused at Camp Delta, GTMO, in January and February of 2003. The first interview was on 6 January 2003 in an interview in one of the trailers at Camp Delta. Each room was approximately 12' x 15' with no exterior windows. Each room could be observed through observation glass. The temperature was comfortable. The accused had on ankle restraints which were bolted to the floor, but his hands were not restrained. The accused was not wearing a hood over his head during any of the interviews. SA [REDACTED] did not yell, threaten, or otherwise abuse the accused. The accused did not appear to be tired and he never mentioned or complained about any prior treatment by any interrogator at any location. The accused mentioned he had some discomfort with an injury but did not indicate he was in pain. The accused talked freely about the firefight which led to his capture. The accused asked for some books. The interview, which lasted a couple of hours, ended cordially.

u. SA [REDACTED] next saw the accused on 16 January 2003. He learned the accused was having some problems at Camp Delta and went to see him. The accused was in a trailer and seemed to be crying. He tried to talk to the accused, but the accused would not acknowledge his presence. He did not know why the accused was acting as he was. SA

█████ left shortly thereafter and went to the hospital in an effort to obtain medical treatment for the accused.

v. SA █████ next saw the accused on 3 February 2003 along with SA █████ from the Naval Criminal Investigative Service (NCIS) in the same type of interview room as on 6 January 2003. The temperature was comfortable. The accused had on ankle restraints which were bolted to the floor, but his hands were not restrained. The accused talked about his family, the travels he experienced with his family, and his experience with land mines. At one point the accused asked why SA █████ had not come by to see him more recently.

w. Mr. █████ was an NCIS agent who interviewed the accused at GTMO approximately a dozen times between 20 November 2002 and 10 December 2002. Guards would bring the accused into the interview room with his legs and hands shackled with no hood over his head. Once in the interview room, the guards removed the accused's handcuffs. The guards would connect the leg shackles to a bolt in the floor. Mr. █████ did not use any loud noise or music during the interviews. The interview room was a normal-sized room with no windows, a one way mirror, and several chairs. During each interview Mr. █████ was accompanied by an FBI agent. A DOD intelligence officer was present during the first two interviews. The interviews lasted 1-4 hours, and there were never multiple interviews on the same day. The interviews never occurred late at night. He offered the accused food and drink. No one yelled at, threatened, or otherwise abused the accused. The accused told Mr. █████ that he was told in the past that he was going to be tortured, not that he had been tortured. The accused provided no other details about that. The accused did not appear to be afraid of any torture while he was being interviewed. The accused talked freely about obtaining false identification cards because he needed the false identification cards to travel. The accused spoke about receiving some basic training concerning land mines and various types of weapons. The accused spoke freely in detail about the firefight during which he was injured. The accused seemed very comfortable during the interviews. The accused sent an unprompted letter to Mr. █████ after Mr. █████ left GTMO which is reflected in Appellate Exhibit 257. The accused's letter to Mr. █████ does not indicate any signs of fear of Mr. █████ or anyone else and does not indicate any mistreatment of the accused by anyone.

x. FBI Special Agent █████ interviewed the accused approximately 12 times at GTMO from November 2002 through December 2002. His partner during the interviews was an NCIS agent. Guards brought the accused into the interview room for each interview. Each time the accused had on handcuffs and leg irons. The accused wore orange prison garb and had no hood over his head. The handcuffs were removed once the accused was in the room. His leg irons were attached to a bolt in the floor. No one yelled at, threatened, or otherwise mistreated the accused during any of the interviews. No dogs were in the interview room. No loud noise was used during the interviews. The interview room was a typical room with a table and chairs. There was a window to an observation room. SA █████ offered the accused food and water. He occasionally brought the accused food from McDonald's after he learned the accused liked that type of

food. All the interviews occurred during the day and no interview lasted more than several hours. The accused appeared to become more relaxed with SA [REDACTED] as time passed. The accused provided details in a narrative format about: obtaining false identification documents for travel, training in land mines, and some basic training in use of various types of weapons. The accused said his father selected him for mine laying missions because of his language skills. The accused provided details about the firefight in which he was captured. The accused made no mention of the torture or mistreatment alleged in his affidavit. The accused talked very little about his time at the Bagram detention facility. The interviews stopped whenever the accused indicated he wanted to stop.

y. The accused alleged in his affidavit that he was mistreated while he was being weighed. The videotape of the accused being weighed, Appellate Exhibit 278, clearly shows the accused was not abused or mistreated in any way by any of the guards.

3. In support of its motion, the Defense submitted an affidavit signed by the accused. The Defense characterizes the accused as a child with limited formal education. The Defense offered no evidence to explain how the affidavit was prepared. The Defense presented no evidence that the accused understands the significance of an affidavit and how it is to be used by the Commission during the suppression motion. The Commission presumes the affidavit was prepared by a defense counsel, at least in part, for the purpose of litigating the suppression motion.

a. The accused has an absolute right not to testify. However, the accused effectively became a witness and placed his credibility at issue by submitting his affidavit during the suppression hearing. Cross-examination is a widely and long-recognized method of assessing a witness' credibility. The accused chose not to face the crucible of cross-examination. Thus, the ability of the Commission to assess the accused's credibility is limited. The Commission affords little weight to the accused's affidavit, particularly in light of the lack of corroboration for the allegations in the affidavit.

b. The accused, in his affidavit, alleges he told certain interrogators what they wanted to hear. However, the accused conveniently neglects to specify what it is he allegedly told these interrogators. The defense argues the accused was boxed into certain statements he made to the interrogators without specifically identifying what those statements were. While there is evidence Interrogator #1 told the accused a fictitious story about an Afghan male in a U.S. prison, there is no evidence such a story coerced or in any way caused the accused to make any incriminating statements at any time. There is no credible evidence the accused was boxed into saying anything to any interrogator. As such, the Commission finds the statements the accused made to Interrogator #11 and FBI and NCIS agents in non-threatening settings were not tainted by any previous statements the accused may have made.

c. The accused developed a good rapport with Interrogator #11 and the NCIS and FBI agents who interviewed him. The accused never complained to them about any prior

mistreatment. The accused wrote an unprompted letter to one of the NCIS agents which undermines any allegation of mistreatment.

d. The Government witnesses were subjected to the crucible of cross-examination. Each Government witness was forthright and exceedingly more credible than the accused's affidavit.

4. The relevant part of the Military Commission Rule of Evidence (M.C.R.E.) 304(a)(2) provides: A statement of the accused may be admitted in evidence in a military commission only if the military judge finds –

(A) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(B) that –

(ii) the statement was voluntarily given.

a. The test for determining whether the statement was voluntary is prescribed in M.C.R.E. 304(a)(4): in determining for the purposes of (a)(2)(B)(ii) whether the statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

(A) the details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities;

(B) the characteristics of the accused, such as military training, age, and education level; and

(C) the lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

b. The accused's statements being offered are detailed. The accused provided his answers to questions in a narrative form, rather than answering leading questions. The accused's statements being offered certainly possess probative value. While the accused was 15 years old at the time he was captured, he was not immature for his age. The accused had sufficient training, education, and experience to understand the circumstances in which he found himself.

c. There is no credible evidence the accused was ever tortured as that term is defined under M.C.R.E. 304(b)(3), even using a liberal interpretation considering the accused's age. While Interrogator #1 told the accused a story about the rape of an Afghan youth in an America prison, there is no evidence that story caused the accused to make any incriminating statements then or in the future. In fact, the credible evidence is that the accused started to make incriminating statements only after he learned the Americans found the videotape at the compound where the firefight took place which shows the accused and others making improvised explosives and placing them along the roadside at night. No statement offered against the accused was derived from, the product of, or connected to any story Interrogator #1 told to the accused.

e. The Commission concludes that, under the totality of the circumstances, the statements offered against the accused are reliable, possess sufficient probative value, were made voluntarily, are not the product of torture or mistreatment, and whose admission is in the interest of justice.

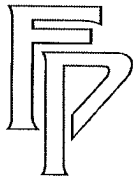
6. There is no evidence the accused made any statement to anyone about the existence of a videotape found at the scene of the firefight. There is no evidence to support the defense allegation that the commander made a decision to search the compound where the firefight occurred as a result of intelligence information obtained from the accused. The evidence is clear, and the Commission finds, the commander's decision to search the compound where the videotape was found was independent of and not derived from any interrogation of the accused. The videotape is not the "fruit of the poisonous tree" as there is no "poisonous tree."

7. The Commission finds the Government has met its burden to show the admissibility of the statements and videotape by a preponderance of the evidence. See MCRE 304(d)(1).

8. Accordingly, the motions to suppress the accused's statements and the videotape are denied.

So Ordered this 17th day of August 2010.


Patrick J. Parrish
COL, JA
Military Judge



Capt. Christopher Eason
Office of the Chief Prosecutor
Office of Military Commissions
Guantanamo Bay, Cuba

Re: **U.S. vs. Omar Khadr**

July 5, 2010

Dear Capt. Eason,

Pursuant to your request, I have conducted a forensic psychiatric assessment of the above defendant. Mr. Khadr was fifteen years old when he was captured in Khowst, Afghanistan and charged with the grenade killing of Special Forces Sgt. F.C. Christopher Speer. Over the course of many months, Mr. Khadr offered a number of statements to interrogators that the prosecution has proposed for admission at trial.

The now 23 year-old defendant contests the admissibility of these statements. His defense team has presented three mental health professionals who assert that Mr. Khadr's statements spanning 2002 and early 2003 were coerced and/or are unreliable, asserting that science demonstrates that these statements should be inadmissible.

Supporting the position that there is science underpinning the defense motion to suppress Mr. Khadr's statements, psychologist Laurence Steinberg, Ph.D issued a statement on May 15, 2008. In support to Dr. Steinberg's opinion, psychologist Katherine Porterfield, Ph.D. submitted a report of her findings on April 12, 2010, and psychiatrist Stephen Xenakis, M.D. submitted a report of his findings on September 10, 2008.

The prosecution has disputed the defense assertions, and among them, the contention that there is a scientific body of knowledge, researched and generally accepted, which supports the contentions of the defense witnesses regarding the confession evidence of this case. The aforementioned opinions have been referred for my consideration on the occasion of a pre-trial suppression hearing, to address the following:

- 1) ***What is the body of understanding of the science of disputed (including false and forced) confessions, and what are its limitations?***

- 2) *What is the body of understanding of the science of disputed (including false and forced) confessions among juveniles, and what are its limitations?*
- 3) *With respect to the assertions of the defense experts on confession evidence and juveniles, have these ideas been tested in a setting relevant to this case? How?*
 - a. *Have these ideas been demonstrated to have an established error rate?*
 - b. *Have they established themselves to be generally accepted in the scientific community?*
- 4) *With respect to Omar Khadr, what relevant vulnerabilities and strengths distinguished him in the context of his interrogations in 2002 and 2003?*
- 5) *With respect to the interrogation of Omar Khadr, what inspired his self-incriminating statements? How do these relate to established scientific understanding of the decision to confess?*
- 6) *With respect to the interrogation of Omar Khadr, how do the assertions of his affidavit relate to his decision to confess?*

SOURCES OF INFORMATION

- 1) Affidavit of Omar Khadr, October 23, 2008
- 2) Motion to Suppress, Defense Motion, US vs. Khadr
- 3) Prosecution witness designation, per memo August 29, 2008
- 4) CITF reports
- 5) Interrogator Notes
- 6) Synopsis of testimony by Dr. Steinberg, May 16, 2008
- 7) Statement by Laurence Steinberg, Ph.D, May 15, 2008
- 8) Interview of Laurence Steinberg, Ph.D, The New York Times,
- 9) Transcript of testimony by Laurence Steinberg, Ph.D., September 11, 2008
- 10) Letter of Darryl Matthews, M.D., Ph.D. and raw data, April 21, 2005
- 11) Transcript of testimony by Katherine Porterfield, Ph.D, September 10, 2008
- 12) Transcript of testimony by Stephen Xenakis, M.D, September 10, 2008
- 13) Transcript of testimony by Emily Keram, M.D., September 11, 2008
- 14) Transcript of testimony by Interrogator 11, January 18, 2009
- 15) Transcript of testimony by FBI SA Bob Fuller, January 18-19, 2009
- 16) Transcript of bombing video
- 17) Defense affidavit, June 12, 2008
- 18) Defense response to Government request for inquiry into mental condition of the accused, July 1, 2008
- 19) Declaration of RJ O'Shaughnessy, M.D., July 21, 2008
- 20) Defense motion for relief, September 8, 2008
- 21) Ruling of September 19, 2008, Judge Patrick Parrish

- 22) Motion for reconsideration of Commission's ruling on D-064, September 5, 2008
- 23) Declaration of Dr. Katherine Porterfield, October 21, 2008
- 24) Government response to defense motion to suppress, December 12, 2008
- 25) Torture Team – Rumsfeld's Memo and the Betrayal of American Values, Phillipe Sands
- 26) Report of Khadr's unclassified statements
- 27) Khadr's unclassified statements
- 28) Khadr vs. US, 381 US App DC 408 (2008)
- 29) Khadr vs. Bush 587 F. Supp 2d 225 (2008)
- 30) Defense motion to compel Dr. Brian Williams as a witness, December 5, 2008
- 31) Govt. response to defense motion to compel Dr. Brian Williams as a witness, December 11, 2008
- 32) Ruling on motion to compel Dr. Brian Williams as a witness, December 16, 2008
- 33) Legal advisor's pretrial notice
- 34) Charges, U.S.A vs. Omar Ahmed Khadr
- 35) 706 Board findings, Ellspeth Ritchie, M.D., and Ingrid Lim, Psy.D., September 8, 2008
- 36) Psychologist's report on Omar Khadr, Bagram, late 2002
- 37) Medical records from after capture
- 38) Report of Stephen Xenakis, M.D., April 12, 2010
- 39) Report of Katherine Porterfield, Psy.D., April 12, 2010
- 40) Discussion with Clifford Hopewell, Ph.D., April 14, 2010
- 41) Son of Al Qaeda, PBS Frontline
- 42) Bomb-making video from archives of enemy combatants
- 43) Video of death scene, "Major Randy Returns"
- 44) Government motion in limine re: defense expert testimony, March 31, 2010
- 45) Defense response to government motion in limine, April 14, 2010
- 46) Additional documents, Guantanamo case file
- 47) Letter from Greg to Omar Khadr, March 18, 2003
- 48) Letters from Omar Khadr
- 49) Notes from SA Robert Fuller
- 50) Notes from CITF Agent 11
- 51) Interview of CITF Agent 11, April 28, 2010
- 52) Testimony of Greg Fuller, FBI Agent
- 53) Notes of NCIS SA Jocelyn Dillard
- 54) Interview of NCIS SA Jocelyn Dillard
- 55) Visit to JTF-Gitmo, April 28, 2010
- 56) Court proceedings, April 29-
- 57) Medical records, April 28-29, 2010
- 58) Log of medical care, Bagram Air Force Base

- 59) Testimony of CITF Agent 11, April 30, 2010
- 60) Testimony of Jocelyn Dillard, April 30, 2010
- 61) Testimony of Col. Randy Watts, May 1, 2010
- 62) Testimony of FBI SA David Giraud, May 1, 2010
- 63) Testimony of FBI SA Doug Raubal, May 1, 2010
- 64) Interview of Bob Melone, May 2, 2010
- 65) Interview of Agent 2, May 2, 2010
- 66) Testimony of Bob Melone, May 3, 2010
- 67) Testimony of NCIS SA Greg Finley, May 3, 2010
- 68) Interview of Lt. Col. Donna Hershey, RN, May 3, 2010
- 69) Testimony of Interrogator 2, May 4, 2010
- 70) Testimony of FBI SA Tim Fehmel, May 4, 2010
- 71) Testimony of Donna Hershey, RN, May 4, 2010
- 72) Interview of Marjorie Mosier MD, May 4, 2010
- 73) Interview of Col. James Post, M.D., May 4, 2010
- 74) Testimony of Damien Corsetti, May 5, 2010
- 75) Testimony of Marjorie Mosier MD, May 5, 2010
- 76) Testimony of Interrogator 17, May 5, 2010
- 77) Interview of Interrogator 5, May 5, 2010
- 78) Interview of Interrogator 1, May 5, 2010
- 79) Testimony of Col. John Post, May 5, 2010
- 80) Testimony of Interrogator 1, May 6, 2010
- 81) Interview of James Addis, RN May 7, 2010
- 82) Medical records of Omar Khadr
- 83) Discussion with Dr. Hopewell, May 25, 2010
- 84) Interview of Omar Khadr, by Major Alan Hopewell, May 25, 2010
- 85) Summary of events of July 27, 2002
- 86) Analysis of videotape of battle scene
- 87) Documents on AbuLaith
- 88) Documents on Ayubkheil
- 89) Behavioral Health Services Evaluation
- 90) BSCT notes
- 91) Combatant Status Review Tribunal for Omar Khadr
- 92) Detainee History, GTMO, November 1, 2002 - April 10, 2008
- 93) Guard Notes from GTMO
- 94) Discussion with Alan Hopewell, Ph.D., June 12, 2010
- 95) Interview of Omar Khadr, June 16-17, 2010
- 96) Discussion with OIC Camp 4, June 17, 2010
- 97) Discussion with Paul Rester, June 17, 2010
- 98) Discussion with Watch Commander, June 17, 2010
- 99) Discussion with Asst. Watch Commander, June 17, 2010
- 100) Discussion with Military Intelligence Commander West, June 17, 2010

OMAR KHADR IN CUSTODY

American forces encountered armed resistance to their attempts to take control of a fortified compound in Khowst, Afghanistan on July 27, 2002. Improvised explosive devices had been found in and around Khowst, and U.S. coalition forces set out to recover ammunition caches before these explosives could be further deployed. As Major Randy Watts, commander of the Special Forces battalion, detailed how American forces discovered a compound with armed fighters inside. The battalion called out to the occupants to surrender the premises. It was met with fierce fire which killed the two Afghani soldiers who had barely appeared in view of the compound, hoping to appeal to its occupants. In the resultant hail of fire and grenades, the US and Afghani forces sustained additional wounded. Major Watts regrouped, brought in air support, and the compound was destroyed.

Omar Khadr was inside that compound. He had heard that American forces were coming, and some occupants had left. The defendant remained behind with others, took up an AK47 and an ammunition vest, and deployed in a fighting posture alongside adult fighters for four hours of battle that followed. In a later interview in 2002, Mr. Khadr spoke of their having a conversation contemplating martyrdom vs. spending the rest of their lives in Cuba. He opted to stay and fight.

The occupants' tactics, according to Major Watts, distinguished them as al-Qaeda. "The Taliban engaged in ambushes, not fixed fighting. Al-Qaeda engaged in fixed fighting. The Taliban would surrender if cornered. Al Qaeda would never surrender."

One by one, the three others with Omar Khadr were killed in combat.

According to Mr Khadr, his vision was temporarily lost (from a shrapnel injury) at some point during the fighting. He was aware that the other fighters were killed, because they no longer were responding to him when he called out.

When there appeared to be no sign of hostilities emanating from the compound, Major Watts's troops moved in to search for dead and wounded and to secure the area.

Sgt. F.C. Christopher Speer, 21 years old and a medic in the Special Forces, stopped to tend to "Abdullah," one of Mr. Khadr's fallen colleagues. Meanwhile, Omar Khadr heard voices that he recognized as English-speaking. According to the defendant, he looked down at his watch and was now able to see the display as 3:30 PM. With that, he armed a grenade and directed it toward where the American soldiers were proceeding through the compound.

The grenade exploded near Sgt. Speer, mortally wounding him. CITF Agent Greg Finley, who interviewed Mr. Khadr later that year, recounts Mr. Khadr to have told him that he knew the fighting was over when he threw the grenade. Personnel on the scene estimated that the grenade traveled thirty to eighty feet.

In the aftermath of the explosion, a Special Forces officer spied Mr. Khadr and shot him twice, in the chest/back area. American forces recall that Omar Khadr remained conscious after being shot. He was reportedly cursing in English, “Fuck you, Americans” and “Just shoot me,” as medics examining him before he was airlifted to rescue. The defendant sustained multiple wounds, most significantly to his chest/back area, and small shrapnel sprayed onto his face and eyes. Nothing penetrated his skull; medical records reflect that Omar Khadr did not suffer head trauma in the battle.

Seriously injured and airlifted to the hospital at Bagram, Mr. Khadr was sedated and underwent surgeries. He remained sedated in order to keep him immobilized and to prevent any movement from interfering with his wound healing. Postoperatively, shrapnel remained in his chest and Mr. Khadr continued to have a significant wound in his left back near his left shoulder. More minor shrapnel wounds affected his left thigh, left knee, and right ankle and foot.

When he weaned off of sedatives and paralytics post-operatively, Omar Khadr demonstrated normal neurological function on examination. The defendant was maintained at the hospital from July 27 to August 12, 2002. During that time, according to nurse James Addis, Mr. Khadr was composed and cooperative. Mr. Khadr impressed Nurse Addis as someone who less frightened and who needed less reassurance than others in his age group with whom the nurse had worked. According to Lt. Col. Donna Hershey, the Head Nurse at the Bagram Hospital, Mr. Khadr was awake and alert by July 29.

Omar Khadr was communicating enough that the staff recognized his excellent command of English by the beginning of August. He was able to inform nurses of the relative severity of his pain from one time to the next. He underwent sensitive eye surgery on August 1 to remove foreign bodies.

Charting chronicled Omar Khadr discussing his eye care with the ophthalmologist on August 2. Ophthalmologist Marjorie Mosier, M.D. had flown in from Kuwait specifically to perform surgery that saved the defendant’s vision. According to Dr. Mosier, the IV antibiotics he was already taking facilitated her surgical intervention to save his vision.

The ophthalmologist recalls Mr. Khadr to have been composed and self-possessed. She found herself surprised that he was fifteen, as he was not distressed as other teenagers she had seen at other times.

Chest tubes removed, he left the intensive care unit at the beginning of August and his lab work normalized in the next days.

Mr. Khadr was fully oriented, according to by hospital notes, by August 5. Nurse Hershey observes that treatment for insomnia and anxiety were readily available, and would have been given if needed. For Mr. Khadr, "it was not necessary," she noted. When staff saw that he was in pain with dressing changes, she recalls, they premedicated him for pain, and this was effective.

By August 8, the defendant told staff that the pain medicine was effective, and he was without pain complaints. Doctors discharged him on August 12, 2002. Nurse Hershey, speaking of the hospital protocols, explained, "The discharge plan based was on whether someone was febrile, or his wound healing."

No interrogations occurred prior to his medical clearance, in keeping with hospital policy, according to Colonel James Post, M.D., the hospital Medical Director, and Lt. Col. Hershey. Mr. Khadr asserts (in an affidavit filed in 2008) that he was in fact questioned while on a stretcher, twice over a three day period. His interrogator would shackle him uncomfortably, contends the defendant, "When they did not like my answers. This caused me great pain...they made me give them the answers they wanted." Nurse Hershey noted that shackling was routinely done with consideration of the wound site. "We were guided by principles of best practices of nursing, rather than the Geneva Convention," she observes with pride.

Interrogations of Mr. Khadr began on August 12, 2002, after the defendant had been released from the hospital to Bagram. The defendant, medically cleared, was discharged with prescription for pain medicine and aftercare plans for the packing, dressing and cleaning of his wounds. adding, "He was likely ready to be interviewed before August 12, but we do not medically clear until discharge," explained Nurse Hershey. Bob Melone, the medic who would assess the detainees at Bagram, distribute medicine and change dressings, recalled Mr. Khadr's "miraculous and rapid recovery."

According to Mr. Melone, he found Mr. Khadr easy to connect to, even though Melone was nine years older at age 24. The medic recalls no animosity from other Bagram staff toward Mr. Khadr and asserts that there were never threats to withhold medicine or prescriptions. He recalled Mr. Khadr to be lucid and to never be overcome by pain in a way that would have given Mr. Melone pause as to Mr. Khadr's ability to participate in interrogation.

Damien Corsetti, a former interrogator at Bagram, was not assigned to Omar Khadr. However, he maintained a friendly relationship with the defendant. Mr. Corsetti depicted Bagram as an environment in which interrogators were under pressure to produce reports and to yield information. Notwithstanding this climate, he recalls Mr. Khadr to be “not distressed. He was smiling a lot.” Interrogator 17, who likewise interacted with Mr. Khadr but did not interrogate him, characterized the defendant as “quite jovial with the doctors, always trying to engage others.”

Interrogator 1 was the chief interrogator assigned to Mr. Khadr. “To him, the enemy was going to torture him,” he reflects of the detainee’s attitude coming into the questioning. “He expected the worst because that’s what he had been told (by others prior to his capture).” The interrogator felt that what Mr., Khadr was most afraid of was going to Cuba and not seeing his family.

Investigator 2, who participated in the first interrogation of Mr. Khadr, explained that the questioners began in a benign manner, and build upon these contradictions. “We knew with his first answers that he was lying based upon what we already knew about the case,” offered Investigator 2.

The defendant provided very little detail about his actions around the time of Sgt. Speer’s killing in early questioning. According to interrogators, Mr. Khadr provided contradictions in his story from early on.

Mr. Khadr, on the other hand, indicates that Investigator 1, who met with the defendant numerous times at Bagram, screamed at him, demanded the answers he wanted, and forced him to sit up in great pain.

Interrogator 1 describes trying to increase Omar Khadr’s sense of uncertainty in the interviewing, to keep him from feeling he had control over the situation. The interrogator talks of flipping a table, showing Mr. Khadr his shoe and otherwise giving the defendant a sense that he might lose control. “I got in his face, I screamed at him, I cussed at him,” remember Interrogator 1. Still, Mr. Khadr offered very little. Relates Interrogator 1, “It took him until interview number #5 just to tell us that he was from Canada.”

Interrogator 5 participated in what he estimates to have been 15-20 interviews of Mr. Khadr. “He puts up a good front,” recalls Interrogator 5, who depicted Mr. Khadr as “a liar, evasive, knew more than what he let us know.” Adds the interrogator, “He did a very good job of sticking to his story that he was not (at the Khowst compound) to do anything bad.” “We were skeptical about the “translator” story, to begin with. People

we spoke to would often give a ‘wrong place, wrong time’ answer,” comments Interrogator 2.

Sometime in mid to late August, Interrogator 1 began to tell Omar Khadr of tales of an Afghan who went to an American prison and who was raped. Mr. Khadr characterized this as the most upsetting of the experiences in his interrogation. Still, Mr. Khadr revealed nothing of his involvement in Speer’s killing and other goings on at the compound. “When we were pricks, he would get defensive...and nervous,” recounts Interrogator 5. “But he didn’t say anything.”

Mr. Corsetti reflects that Mr. Khadr did not avoid interrogation or any interrogator in particular. While they maintained a friendly relationship throughout, Omar Khadr never told Mr. Corsetti of abuse, threat, or torture. Interrogator 5 remembers Mr. Khadr to complain about pain occasionally, and to experience watering of the eyes, but asserts that interrogations were not conducted with Mr. Khadr in any distress from pain.

Rounding twice a day, Mr. Melone found the defendant engaging; eventually, “we thought it would be a good thing for him, to get out of his cell,” and the medic recommended him work detail. Mr. Corsetti relates that the tasks provided via Mr. Melone “were rewards,” and the defendant appeared to be in good spirits while engaged in them. Interrogator 17 observed that, “he got healthier as time went on...he appeared strong to me.”

In late August 2002, a return sweep by Major Randy Watts to the compound in Khowst yielded a videotape featuring Omar Khadr, among others. The smiling Khadr appeared on the tape in various settings, including one segment in which he was assembling explosive mines while Abu-Laith, who was directing activities at the Khowst compound, worked on another aspect of the assembly only several feet away, comfortable enough not to be watching Mr. Khadr.

The same tape also featured Omar Khadr assisting in the placement of land mines. Other scenes in the tape include Mr. Khadr excitedly looking forward to killing Americans. According to Mr. Khadr, at no time was he taking any recreational drugs while participating in the activities of the bomb-making video, and he has never used recreational drugs or narcotics.

In other sections of the video, Omar Khadr is relaxed and fidgeting with a walkie talkie and speaking playfully with others in the compound. There is not a whit of evidence of Omar Khadr’s discomfort with his activities in the home or with his peers in the home. He projects a smiling, enthusiastic, and relaxed attitude.

When Interrogator 1 showed stills from the tape to Mr. Khadr in an interrogation on or around August 31, Omar Khadr conceded his involvement in bomb-making activities. His subsequent admissions were considerably more than he had given to date.

“He got caught with his hand in the cookie jar,” recalls Interrogator 5 of Mr. Khadr’s reaction to learning of the videotape. “We didn’t have the ability to prove that he was pulling the wool over my eyes until we got the video,” he added.

“The video was the coup de grace – there was no way he could deny what he did and how involved he was. . . . you could see a big physical letdown in him – his whole body language changed, his shoulders slumped,” recalls Interrogator 5. “We could see that he has been shown a liar, knows the ramifications of what he has admitted.” Interrogator 1 adds, “The video opened the floodgates.”

In September 2002, the defendant provided a detailed account of his recollection from the Khowst battle. He presented himself in a favorable light, as he always has, but the detail of his story was consistent with his not having been knocked unconscious when he was shot in the chest.

According to Mr. Melone, he once saw Mr. Khadr crying, and with his arms in front of him at shoulder height with a bag over his head. He believed that Mr. Khadr was being punished, though he does not recall any other such incident. The defendant needed no acute intervention for anxiety, although Mr. Khadr had previously expressed fear of going to Guantanamo. At no time, reports Mr. Melone, did Mr. Khadr complain of being treated roughly. Said Mr. Corsetti, “Once he knew he was going to Gitmo, he looked defeated.”

In our interview, I attempted to discuss the tape with Mr. Khadr. He was highly agitated by my showing it, and contended that this was done in order to upset him. He indicated that it was “torture” to watch the tape, because it reminded him of being taken advantage of “by everyone.” Though he indicated otherwise, the videotape of our interview reflects that he did watch the tape, without unusual distress but sulking over my insistence that I be able to ask him some clarifying questions relating to his activities.

During our exchange, the defendant discounted his bomb-making activities by stating that he was merely taping wires and could not therefore have been harmed, in response to my questioning him about why Abu Laith would be so comfortable with Mr. Khadr as to work alongside and so close to him. Notwithstanding the defendant’s contention that without detonators, the activity was completely safe, Mr. Khadr was entrusted to assemble the explosives properly and without anyone watching.

Even were there to be no risk, if Mr. Khadr were to be inept in his taping, the explosives might fail to properly function after being planted. Thus, sometime before this tape was made, Omar Khadr had engendered enough confidence in Abu Laith to join him in the assembly of these mines.

In subsequent interviews, however, the defendant remained otherwise withholding and self-serving. Little additional actionable intelligence emerged from the interrogations before Interrogator 11 took over questioning just after the defendant came to Gitmo in late October 2002. According to Interrogator 11, the defendant indicated that he had been lying to his American interrogators until they showed him the bomb-making video. To Interrogator 11, he added that the proudest moment of his life was laying the mines.

In their discussions about the video, Mr. Khadr reportedly told her of laying the mines at a choke point between two mountains. He discussed undergoing surveillance training by Abdullah the Tunisian, according to Interrogator 11, and surveyed American vehicle activity at the Khowst airport. FBI Agent Bob Fuller also spoke to the defendant about his surveillance activities; Mr. Khadr reported that Abu Heitham had told him to go out to a road between Asadabad and Khowst and document US convoy travel on that road; how many vehicles in the convoy, distances between the vehicles, speed, and time it came through.

Agent Fuller recounted that Mr. Khadr told him he originally planned to be a translator, and did not have to stay in Khowst, but when Mr. Khadr learned from Abu Heitham that they were planning to kill Americans, he decided to stay. Reportedly he was aware of a 1500 dollar reward for each American soldier killed and he wanted to make a lot of money. The agent recalled Mr. Khadr as “smart for his age,” and with a “mature intellect.” Mr. Khadr was “proud to be a soldier...he explained how a receiver would be operated with a transmitter, he knew the distance of outer limits for detonation..I was impressed with the level of his detail.” Agent Fuller, a former EMS worker, observed no recurrent intrusive recollections, no problem with his memory, no irritability or outbursts of anger, no problems concentrating, no hypervigilance, no startle, no avoidance of any discussion of Bagram, and no discussion of nightmares.

Interrogator 11 likewise recalled Mr. Khadr to be consistently in good spirits in their interactions. She relates that Mr. Khadr described the July 27 Khowst battle in moment by moment detail. The defendant reported to Interrogator 11 that after having been thrown by a blast, he grabbed three grenades, went out into the courtyard, distributed two grenades, and had kept one for himself. Further illustrating his recall, according to Interrogator 11, he drew a detailed sketch of the scene. Reflects Interrogator 11, “His detail was amazing relative to other detainees. He never said he did not remember, never said he was knocked out, never said he was confused.”

Of Mr. Khadr, Interrogator 11 observed that his discussion of events lacked emotion, and he exhibited no sense of hyperarousal or panic...I never had a sense that there were any topics that were too painful to discuss.”

Asked about Bagram, Mr. Khadr, recalls Interrogator 11, “just said he told everyone he had killed a US soldier with a grenade, and how others knew him because of his father, and how “they caught me lying” when they showed him the videotape.”

In the course of twelve interviews with Interrogator 11, and with Agent Fuller and others, Mr. Khadr identified a number of al-Qaeda figures, numbers of hand-held radios, guesthouses and training camps.

According to Interrogator 11, Mr. Khadr told her he had been to four training camps (al Farouq, Derunta, Khaldan, Abu Musab), and described them. In his discussions with Agent Fuller, Mr. Khadr reportedly detailed how his father set up NGO's as charitable organizations and then transferred monies to al-Qaeda.

In fall 2002, Omar Khadr began writing to his parents. On November 25, 2002, he wrote of his experiences, one month after arriving at Guantanamo:

The Americans are the opposite of what the whole world denies. Health services 24 hours, three meals a day, Ramadan eat before dawn and sunset

Mail was running slower, however, and Mr. Khadr was yet aware of why he did not receive a response. On December 10, 2002, he wrote once again, complaining that his parents were not writing to him, not that he was suffering -- not that he had been tortured, not that he gave a false confession.

Omar Khadr forged a number of friendly relationships, including with Agent Greg Finley, who worked with Mr. Khadr from November to December 2002. Later in December, 2002, Mr. Khadr wrote to Agent Finley,

Dear Friend,

How is everything in Washington? I hope it's everything is cool

Is there any news about my situation? Please send it to me

Can you bring me some magazines (cars) or any international news in Arabic if possible

Send me your news and how is your health

And about me I'm OK I'm trying to do my best (120%)

about me my shoulder is getting worse everyday and I have chest pain and my eyes I'm trying my best in reading and I have to wait until my eye gets stronger

if you can ask about you Is the Canadian gov have not come to see me

send anything you can bring me

And thank you very much

Omar Ahmed Khadr

The detainee's records and investigators interviewed for this examination note that the defendant was not in pain on the occasion of his interviews. They found it easy to stop the meetings and have him seen by medical personnel, if such issues arose with the detainees, and to then resume interrogation. FBI Special Agent Tim Fehmel, who interviewed Mr. Khadr with Agent Finley in November and December 2002, recalled no interference of pain in their encounters.

Agent Fehmel adds that questions were posed to elicit a narrative (as opposed to focused to a specific end). Among the items Mr. Khadr disclosed to them was where he could get false documentation to travel around Afghanistan. Omar Khadr reportedly told Agent Fehmel that he trained over several weeks, and went into detail on al-Qaeda training tactics and weapons. Other documentation adds that Mr. Khadr revealed he had received 1:1 training from Abu Heitham and Abu Haddi. Reportedly, he had not spoken about training previously because other detainees had told him training was a crime; others would instruct him not to admit to training.

In addition, reports Agent Fehmel, Omar Khadr recalled the battle in Khowst in their meetings. The defendant had no remorse for the death of Sgt. Speer, but said he wanted to kill a lot of Americans and make a lot of money. According to Mr. Khadr, there had been a lull in the fighting of at least ten minutes when he threw the grenade that day. Discussing the events, observed Agent Fehmel, Mr. Khadr was not sweating or hyperventilating as if in a state of hyperarousal, but thoughtful and reflecting.

According to the interrogators, each believed that the quality of information they received would be better if the defendant was not experiencing noxious distress. To that end, when the defendant presented with acute distress on January 16, FBI Special Agent Doug Roebhel immediately shut down their meeting in order for Omar Khadr to be psychologically evaluated and a treatment plan formed. "He was sobbing inconsolably,"

recalls Agent Roebhel, who spent about 30-45 minutes trying to comfort him, before calling psychological services..

Mr. Khadr later conceded that in that January 2003 encounter, he suggested that he was suicidal to try to gain phone call privileges to his family, from whom he had not heard. In an extensive evaluation, Mr. Khadr reported only a dream of his mother being killed, but denied intrusive recollections or thoughts. The defendant noted to the examiner that he had been experiencing intense sadness, but other symptoms of depression. With follow up, Omar Khadr repeated concerns about homesickness, and to a lesser degree, of the battle he was in. There was no sign of Posttraumatic Stress Disorder.

At that time, interviews of the examinee were less frequent and he queried interviewers about why they were no longer visiting with him. Mental health professionals found him needy and felt his mood worsened with fewer interrogator interviews. The BSCT team, also having examined him, opined that with less attention from an interviewer, Mr. Khadr was more vulnerable to the scheming of other detainees. In this climate, he endeavored to manipulate telephone privileges by giving an ultimatum of suicide, a behavior he had not exhibited before. The BSCT team credited rapport building as the optimum approach, owing to the quality of communication he had enjoyed with Interrogator 11.

Psychological services were following Mr. Khadr with successive and at times lengthy and well-documented visits on January 17, 18, 19, 20, 21, 23, 24, 25, 27, and February 10 & 12, 2003. Mr. Khadr was responsive to supportive feedback and did not require medication intervention.

In February 2003, Canadian officials interviewed Mr. Khadr, who related in substance the account he presented to Americans. The Canadians declined in that first meeting on February 14 to repatriate him. According to NCIS Agent Jocelyn Dillard, "He said they were screaming at him, it felt like torture."

The next day, in a follow up meeting with the Canadians, Mr. Khadr asserted that his story was false, and that everything he had told the Americans had been elicited by the American's torture.

Agent Dillard met with Omar Khadr during February, before and after he retracted his statements. She remembers Mr. Khadr to tell her on February 17, after he had retracted his statements, that other detainees gave him "Congratulations." He told her after the first Canada interview that other inmates had "picked on" him.

Thereafter, Mr. Khadr declined from February 18 onward to communicate with psychologists as well. Psychological services attempted to forge communication with repeated visits, but they were spurned each time.

The defendant did accept medical care, and notes reflect uninterrupted treatment from February 17, 2003 onward, including hospitalizations for intravenous antibiotics for an infection of his original shoulder injury. That August, after a reported hunger strike, doctors treated him for duodenitis and reflux disease.

Even after he retracted his statements in February 2003, the defendant made no mention of mistreatment by American interrogators and guards. This is particularly notable in his letter of March 3, 2003 in which he could candidly note:

Canadian CIA said there is nothing they can do for me. I was very sad

A letter arrived from his mother on March 6, 2003, that included:

ICRC visited me and told me you are in the best of conditions

Subsequent notes from psychological services were limited due to Omar Khadr's lack of interest in participating in a more lengthy evaluation. These notes, however, depicted a detainee not exhibiting symptoms of an acute illness, and not concerning himself with "abuse"

At the same time, were Mr. Khadr to have concerns, he made them known. On July 15, with his brother Abdurrahman now a detainee, Mr. Khadr noted that his only concern was that his brother be able to move next to him. He did express frustrations with being locked up, the sizes of his portions, and a variety of medical concerns, but did not articulate any complaints of torture.

In a meeting with the BSCT team in November 2003, Mr. Khadr commented that he "would not mind staying here at GTMO because it's not so bad." He continued to express his greatest concerns as relating to his mother and his brother.

Correspondence had its gaps, but on December 10, 2004, his mother wrote:

I know your mental health is excellent, that your self-esteem is sky high

Another extensive psychiatric note appears on March 26, 2005, noting the defendant to characterize himself as happy; that he has occasional nightmares, and that he is without hypervigilance, no avoidance of others, no avoidance of sleep, and ultimately, no sign of depression or anxiety (including PTSD) disorder.

In the meantime, correspondence with his family continued directly and back and forth. Nowhere was either Omar Khadr or his family mentioning torture, abuse, or any enduring distress over incidents or mistreatment.

There is no documentation of sexual assault or other violent victimization of the defendant. On July 31, 2009, Omar Khadr tested positive for the herpes simplex virus.

His injuries healed well, and Mr. Khadr has been largely unrestricted in his routine. His lack of vision in one eye does not prevent him from playing basketball and soccer. He has no complaints that relate to mysterious injuries such that one would associate with assault, or beating. However, in June 2010, the defendant has asked for a transfer to another housing pod due to concerns with one other inmate. Mr. Khadr chose summarily not to discuss any sexual advances of another, if that has been an issue for him.

The detainee is reportedly very popular within the camp. In addition to having killed an American soldier, about which he reportedly bragged, he is respected for the stature of his father within al-Qaeda. In addition, Omar Khadr's English facilitates communications and problem solving with the guards. He is young, strong, and a good athlete and has memorized the Qur'an, and leads prayers. Lastly, his access to many attorneys volunteering for him and to sympathetic media, for the other inmates, reflects a conduit through which they can advance their cause.

When I visited JTF-Gitmo, Mr. Khadr had been complaining of shoulder pain and wore a sling when he had traveled to court earlier in the day. As I stood in a group with military who toured me around the facility, Mr. Khadr emerged from the television room, where he had been watching news of his case on al-Jazeera, according to a guard who had escorted him. As he saw the group of us, Mr. Khadr walked over us to engage the group in a friendly manner, waving his arms and without any apparent limitation in range of motion in his shoulder – and without a sling. Later that evening, he joined peers for a game of soccer.

In the impression of one senior guard, Mr. Khadr is a "rock star" at Gitmo. Other guards do not experience him as a leader of others; rather, a person who takes initiative who looks out for himself. Given games or certain items, when advised to share by staff, Mr. Khadr replies about his peers, "Let them ask for their own."

PERTINENT BACKGROUND INFORMATION

Omar Khadr is one of six living children of Ahmed (Egyptian-born) and Maha Khadr (Palestinian-born). Born in Scarborough, in his earliest years, he lived in Ontario, Canada.

The defendant's sister Zaynab is 31, and "the smartest" of the siblings, observes the defendant; she is the only Khadr sibling who finished high school. Zaynab is a devout Muslim, a teacher, and has been married four times – including to Islamist fighters. From as early as age six, Mr. Khadr's parents left him with his sister Zaynab in charge of the home. Omar experiences her as his closest sibling.

Abdullah is 29 and incarcerated on charges of weapon sales to al-Qaeda. Abdurrahman is 28, formerly incarcerated in Guantanamo, is the most Westernized of the siblings; he was recently arrested for domestic violence toward his wife. Karim, 21, is partially paralyzed from the 2003 military assault that killed their father, Ahmed Khadr; Karim was recently arrested for sexual assault. Maryam is 19. All live in Ontario.

Another sibling, Ibrahim, died at age 2. The loss was painful for the Khadr parents, and Omar recalls a sense of their sadness as he grew older, the child next in line.

The defendant acknowledges that he was the favorite child of the family growing up. His best sense of this is his personality. He characterizes himself as easygoing and with a "very, very cool temper."

Omar recalls himself as close to his siblings growing up, spending time with them in activities as friends do. Since age 6, according to Omar Khadr, he studied martial arts with more than one of his siblings, interrupted by changes in the family base.

Mr. Khadr's father Ahmed had earned an engineering degree in Canada. After college graduation, however, Ahmed went to work for an organization, Human Concern International (HCI), that was affiliated with a Pakistan-based orphanage, Hope Village.

In 1996, Ahmed Khadr was arrested for the bombing of the Egyptian embassy in Pakistan. Incarcerated for a number of months, he was released to Canada with his family. Released from HCI because of his affiliation, Mr. Khadr then founded (Health and Education Project) HEP, based in part in Jalalabad but raising money in Canada.

Mr. Khadr disclosed in statements to American intelligence agents that his father claimed to raise money for orphans but had redirected a large portion to Osama bin-Laden's training camps. The defendant recounts moving more frequently after 1997, and recalls visiting these al-Qaeda training camps. Ahmed Khadr was reportedly close to Osama bin-Laden, and Mr. Khadr recalled meeting Bin-Laden on two occasions.

The elder Mr. and Mrs. Khadr reportedly raised money in Canada “for the orphanages” and otherwise shuttled between Pakistan and Afghanistan, specifically Laghman, Bagnan, and Khawst. Omar Khadr indicates that he had been in Khawst prior to his activity leading to his arrest, to see “the orphanage” there.

Omar Khadr is fluent in Arabic, English, Pashto, and Farsi. Some reports note his fluency in Urdu as well. According to the defendant, he spent time in Peshawar, Pakistan from a very early age. There, he was exposed to a Farsi speaking community and interacted with many, by virtue of his father’s work.

Ahmed Khadr did not speak Pashto or Farsi, and Omar Khadr acknowledges he would translate for his father, “like helping your dad fix the car.” Other brothers had the skills, but his older brother Abdurrahman was out of the home and living a freer and more secular lifestyle. Abdurrahman was in trouble with their father frequently, for disobedience.

The defendant experienced his father as strict, his mother loving; the home was disciplined, but he does not recall fearing his father. Punishment was verbal, physical, and withholding of television, but nothing Omar experienced as abusive. Omar characterizes himself as a son who generally did not get into trouble, but was self-reliant and on his own or with his brothers in Jalalabad or Kabul. “I had been raised from a young age to be by myself,” he adds, “me and my younger brother and younger sister...we can depend on ourselves.” He told interrogators that he had traveled to many countries, and liked Jordan.

According to the defendant, he was schooled in both Canada (1st, 4th, beginning 8th grade) and Pakistan (Peshawar), attaining an 8th grade education. He and his two older brothers left school after completing 8th grade. Omar Khadr repeated 8th grade in 2000, he relates, when he developed a mysterious affliction in which he could not concentrate on examinations and consequently failed his tests. According to the defendant, doctors evaluated him and found nothing.

It is unclear what the impact of his travel in the middle of the school year had on his studies. Also at that time, his sister Zaynab had moved out of the house in her first marriage. Mr. Khadr reflects, I thought (her husband) was taking my sister away from me.” Zaynab’s first child, born that year, had hydrocephalus. The baby’s health was precarious and a great source of anxiety for the whole family. The defendant indicates that he repeated the 8th grade and completed his studies successfully in 2001 before leaving school and not returning because of the war.

The defendant expressed no reservation for the risk he was embarking on when he went to Abu-Laith’s compound in Khawst, adding that he had been sent away to “translate”

in the past. Of his father, he noted, “He knew almost everybody...he didn’t have a problem leaving me alone with anybody.” Interrogator 5, sizing up Omar Khadr, observes, “He is more mature because he moved around a lot; he developed the ability to adapt to situations quicker, and he absorbed different cultures.”

In our interview, the defendant acknowledged Abdullah and Abdurrahman having attended al-Qaeda training camps from ages 12 and 13, placed by their father. In earlier statements, Omar noted his brother Abdullah as the more radical of the two, and that he had “attended just about every camp.” Abdurrahman reportedly dropped out of the camps or was asked to leave (but returned) more than once.

Mr. Khadr insists in our interview that his own and Karim’s military training was “one-on-one;” in earlier interviews with interrogators he spoke of training in camps and with live land mines, as well as rocket propelled grenades, pistols, rifles, explosives, and hand grenades. Mr. Khadr dismissed the significance of this training, comparing it to being in a martial arts club. Asked what he had been taught about the U.S. military, the defendant replied that all he knew he had learned from Sylvester Stallone movies Rambo and Commando.

The defendant describes his longtime style of coping as trying to keep unpleasant things out of his mind, by reading a book, or starting a conversation. He would not say that he was surprised that his father died, even when prompted three times.

MR KHADR: There is not one time that I've thought about my father for longer than ten seconds or many; never.

DR. WELNER: Not one time at all?

MR. KHADR: Not one time.

COURT OBSERVATIONS

In April 2010, as witnesses testified in these proceedings, I viewed Mr. Khadr for an extended period during the testimony of multiple witnesses.

On successive days, I observed Mr. Khadr to sit comfortably at counsel table, communicating confidently with more than one of his attorneys. Occasionally, he rocked his leg with nervous energy. He exhibited no distress, no pain, and did not require breaks or special attention even during testimony by Interrogator 1, who described his experience at Bagram, including threatening stories told during his interrogation.

Mr. Khadr tracked the proceedings without detachment or distraction, as engaged as anyone at the attorneys’ tables.

Attorneys periodically communicated with Omar Khadr; I observed him to smile broadly at times, and did not observe him to cry or demonstrate shaking during the entire period of his being in court and confronting the subject matter.

As Mr. Khadr sat, composed and engaged, Dr. Porterfield and Dr. Xenakis sat several feet away, to his rear. At no time during the entire court proceeding were they summoned to make an acute intervention for the impact that this content was having on Omar Khadr.

MENTAL STATUS EXAM

Omar Khadr and I met in an interview room in Camp Echo for a videotaped interview spanning June 15 and 16, 2010. I explained to him my profession, whom I was consulting to, my desire to arrive at independent conclusions that he had an opportunity to inform, and my recommendation to videotape in order to preserve an accurate and fair record for all parties concerned. In addition, I made clear the confidentiality limitations of a forensic interview. I advised Mr. Khadr that I would be responsive to his comforts, hunger, prayer, and stamina, and that we would break whenever he felt the need. We ended our first day at a time of Omar Khadr's choosing, and the second day ended earlier than expected in order to accommodate my collateral research.

Mr. Khadr is as a vigorous man who looks his stated age, with neatly groomed beard. He exhibited a friendliness that was quite charming. He is very confident, speaks to the military guards with an air of an employer, and with the subtle refinement of a person of important self-esteem. He attempted to control the interview in a variety of respects, including interrupting questioning, redirecting me, and posing inquiries of his own. The defendant would cut off the probing of anything relating to the al-Qaeda affiliation of himself and his family, as well as discussions of his relationships with others in custody, for example. But he demonstrated fluency for the documentation of his case, be it court testimony or even television programs.

Omar Khadr's face bore no disfigurement from the shrapnel wounds of his injuries on the day of arrest. Mr. Khadr assumed a variety of postures during the interview, leaning into the examiner, coloring with a pencil, or slouching with a leg slung over the side of the chair. At one point in the interview, Mr. Khadr rolled up a piece of paper and made stuffing motions to the open end as one would do when packing something.

The examinee sat comfortably throughout the interview, vigilant, fully engaged and studying the wording of each question. Considering I am an American and interviewing him as an al-Qaeda defendant in the context of a murder case at the request of prosecutors, his level of vigilance was not pathological. His responses and comportment

demonstrated a self-assurance with which he could advance his own interests through the vehicle of our encounter.

The examinee makes good eye contact. He is courtly, but responds to persistent query with a mixture of annoyance and exasperation. Mr. Khadr communicates with a faint accent and Canadian dialect. His voice occasionally lowers to an almost inaudible level but he quickly responds when I remind him of the video camera. Mr. Khadr's mood is neutral, advancing to irritable when we review the bomb-making video. He shows the strongest resistance to attempts to explore whether he has been sexually assaulted or abused.

With some questions, the defendant's pauses to calculate self-serving answers were gaping. When his easygoing veneer was penetrated with uncomfortable history, from his father's past to his Jihadist-minded siblings to his avid participation in bomb-making on videotape, the defendant became impatient and angry. He would ask why I was posing certain questions with an entitlement that such explanations are forthcoming, asserting his "right" to know.

When this failed, Mr. Khadr was quick to suggest to the interviewer that I should not want to "cause your patient harm and pain" by probing such issues, doing so with a faint smirk. When we discussed his experiences in the house in Khowst, he noted that mines were placed in two rows of five each, roughly ten meters apart. Mr. Khadr offered impressions about the house and provided enough specifics to engender the impression that he is able to remember details of that time without emotional consequence. Mr. Khadr was neither tearful nor emotionally or physically aroused while we discussed the video, even at his most aggravated.

When my queries persisted because of his evasiveness, he accused the examiner of bias, of not letting him finish his responses, and of doing the government's bidding. These challenges were quickly defused by reminding the defendant that my asking the questions was precisely to be non-judgmental.

Omar Khadr is attentive, fully oriented, and familiarizes the examiner with the rules and routines of Gitmo. He exhibits intact memory, but asserts memory problems for the period of the confrontation leading to his arrest and shortly thereafter. There is no evidence for hallucinations, visual or auditory. The defendant's guardedness does not include irrational persecutory, referential, grandiose or jealous references.

His mood is mildly anxious and irritable when the interview is more difficult for him to control; his affect congruent and relatively appropriate.

The examinee impresses, in discussions requiring introspection, as alienated and self-absorbed. He maintains contact with family, but wonders how close their relationships will be when they reunite. Asked whom he misses the most, he cannot think of anyone. Given an opportunity to expand what he misses to “anything,” he replies “Being loved.”

Asked to recount his experiences, the defendant repeatedly asserts that he was tortured and abused to the current day. When asked to detail such torture, he refers me to his affidavit as if he is otherwise unable to recall details. This is consistent with his responses that he does not know what he remembers or what he has been told; Mr. Khadr uses the affidavit as a substitute for a personal narrative. He dispatches my probing of his allegations of torture with a disdain that he should not have to bother discussing this. Indeed Mr. Khadr is globally bothered by his being held custody and is outraged over same, considering this to be abuse and torture.

Mr. Khadr is exceptionally guarded about acknowledging the Jihadist activity of any of his siblings or his father. He explains, for example, his father’s being targeted as resulting from his being a foreigner in a time of war, and all foreigners were targeted. The examinee does not acknowledge any personal responsibility.

DR. WELNER: What are the five things that you most regret in your life?

MR. KHADR: Regrets?

DR. WELNER: Yes.

MR. KHADR: I don’t think I had a choice in my life to regret anything, because I didn’t make any choices to regret them.

DR. WELNER: What would you say the five worst things you’ve done in your life have been?

MR. KHADR: I don’t blame myself for anything that I didn’t have a choice to do.

DR. WELNER: But, I asked you a different question. We’re talking about the regret. What would you say are the five worst things that you’ve ever done?

MR. KHADR: That’s going to have to be somebody who has more experience to say what I did was wrong or not.

DR. WELNER: I’m just asking you about your entire life.

MR. KHADR: The firefight was a bad thing and what happened before it was a bad thing. But I’m not going to take the blame on it because I didn’t have a choice in it.

DR. WELNER: When you say what happened before it?

MR. KHADR: Like the mine things, the bomb making, all these IEDs, all these things were bad things, but I don’t think it’s fair to blame me for the things I didn’t have a choice in doing.

He encapsulates his situation as one in which he was taken advantage of by everyone around him. Even as a 23 year old, he distinguishes himself as all the more hurt by this

experience because none of the other detainees are as young as he is, in his 20's. The defendant expresses umbrage at the notion of being held responsible for killing Sgt. F.C. Speer because "there's nobody to blame but me." When confronted as to whether others might be inclined to blame Mr. Khadr because custodial records noted him to be "bragging to guards about how many Americans he had killed," he deflects.

FORENSIC PSYCHIATRIC ASSESSMENT

1) What is the body of understanding of the science of disputed (including forced and false) confessions, and what are its limitations?

A suspect contends with pressures to confess and pressures to not confess.¹ Amidst these competing forces, there are many factors that may prompt a person to confess to a crime.

Research on what prompts **true confessions** is limited to studies of Icelandic and Irish prisoners by Gisli Gudjonsson. Dr. Gudjonsson compiled a comprehensive list of 52 such factors for study in his Gudjonsson Confession Questionnaire (GCQ).²

Research using the GCQ has denoted "**perception of proof** (sense of insurmountable evidence)" as the most frequent basis for a suspect's confession. Dr. Gudjonsson also identified "**internal pressures** (such as shame or guilt)," and "**external pressures** (influence of police or family and coercion)."³

Just as a suspect variably confronts the perception of proof or internal or external pressures to confess, so does the suspect encounter a host of pressures not to confess. Rejection from the community, from family, loss of freedom and criminal punishment, or fears of retaliation may outweigh any pressure that a person feels to confess, no matter how great.

Forced but true confessions are not established by a scientific methodology. In the setting of two competing accounts of the origin of a person's confession, **factual evidence** informs a trier of fact about what influences inspired a true confession.

¹ Gudjonsson G and Petursson H **Custodial Interrogation: Why Do Suspects Confess and How Does it Relate to Their Crime, Attitude, and Personality?** *Personality and Individual Differences* (12) p 295- 306 (1991)

² Gudjonsson 2003. p 628-630

³ Sigurdsson, JF & Gudjonsson, GH **Alcohol and drug intoxication during police interrogation and the reasons why suspects confess to the police.** *Addiction*, 89 (8), 985-998 (1994)

False confessions are confirmed by the identification of an alternative perpetrator or physical evidence that a person could not have been involved in a particular crime. Scientists with an interest in this area derive current understanding from individual cases to which they have access to complete case files.

The scientific literature demonstrates that false confessions are exceptionally rare events that reflect a byproduct of the interplay of suspect vulnerabilities, how interrogators use techniques that exploit that particular suspect's vulnerabilities, and the context in which the confessions are offered.

Only a very small number of behavioral scientists have actually encountered or had access to an adequately informed (vulnerabilities of suspect, approach of questioners, context of questioning) case file of proven false confessions. Therefore, those with an interest in this area must derive lessons from whatever is reported as false confessions.

Reported false confessions have been written up on websites of advocacy organizations (eg. Innocence Project, Northwestern University School of Law) and in a few published "case studies." These case studies form the greatest substance of scientific understanding of false confessions – although they have numerous shortcomings that limit substantive scientific conclusions.

One of the most fundamental controversies highlighting the lack of science about false confessions is the contradictory way in which false confessions are even defined.

False confessions have been defined as a person moving from denial of a crime he has not committed to accepting responsibility for a crime he has not committed. This definition seems to be straightforward.

However, a number of the suspects in the aforementioned case study articles denoted as "false confessions" actually represent an expansion of the definition, and are not false confessions at all. These include:

- 1) Guilty pleas by the innocent who believe the prosecution has evidence to convict them. This process does not replicate the interrogation setting and the questioner-suspect dynamic and its unique interplay
- 2) Cases in which a suspect implicated himself with statements placing him near the scene. These are not false confessions, because the person believes that what he is saying establishes his lack of personal involvement in the crime
- 3) Cases in which a suspect contends that police lied-misrepresented the exchange, mistranslated his statement, or misquoted him, and no confession was ever signed

- 4) Cases in which a suspect claims to have had a dream of being involved in a crime, but never admits to being responsible
- 5) Cases in which a suspect has been implicated as a codefendant by another person who confesses a role in the crime
- 6) Cases in which a suspect is implicated by other wrongful testimony of a third party. In these instances, an innocent person has never taken ownership of responsibility, but has been swept up in the misidentification by another
- 7) Cases in which a person gave inaccurate details in a self-incriminating statement (which may have been self-serving), was subsequently acquitted or exonerated, but who may have actually been involved in the crime or even responsible
- 8) Cases in which there remains active debate over the innocence of the subjects
- 9) Cases in which the principals remain incarcerated as inmates; that evidence the authors found credible has been discounted by higher courts, in some instances repeatedly

Case studies that list the above types of cases as false confessions cannot provide any scientific understanding of false confessions, how they happen, and how they are to be prevented because they are not false confessions. Including cases that are not false confessions misleads well-meaning students and professionals as to frequencies of certain factors or issues, because the readers do not study the cases closely enough to distill the actual false confessions from the puffed up numbers.

Of those cases of legitimate false confessions, the source of data varies in its scientific reliability. Those who are not drawing from their own case files of more complete and objective data may draw a distorted account of the history of a case. In the published case studies, authors were comfortable to include cases where information derived exclusively from families of offenders attempting an appeal; from websites with no established quality control procedures; exclusively by defense briefs to the court; or from news media with different standards for admissibility than a professional would have for their own practice.

None of these sources alone would reflect any generally accepted methodology for forensic science assessment, let alone research understanding.

Thus, the body of data representing the corpus of false confessions contains a high error rate, even before the phenomenon exposes itself to study. This does not mean that false confessions do not occur. It does mean that those behavioral scientists that have written on the subject and have taken a special interest in it have forsaken the validity and reliability of what is a false confession for the sake of demonstrating the highest possible frequency of this circumstance.

This is not an unprecedented conflation. In the 1990s, when enthusiastic psychologists identified patients with repressed memories of sexual abuse, a whole cottage industry of specialists in this area developed, with book chapters and articles in the peer reviewed literature, then techniques for eliciting recovered memories, then seminars, followed by criminal litigation against all of those now-“exposed” fathers and mothers and civil litigation against the *respondent superiors* of schools, hospitals and all other sanctuaries where sexual abuse was believed to have occurred.

When sound research demonstrated that false memories could be implanted, this “body of science” on recovered memories became a source of humiliation for the behavioral sciences which had become overly absorbed in the importance of their own “expertise,” without caring to admit and to remedy the paucity of valid and reliable data. This runaway train of scientific hubris yielded its own miscarriages of justice.

Commingle in the published literature on false confessions are polemics by three authors (Dr. Richard Ofshe,⁴ Dr. Richard Leo,⁵ and Dr. Saul Kassin) and several inspired by them and who have echoed their advocacy:⁶ Each author, with slightly differing approaches, is a zealous critic of police interrogation procedure. Their articles mix confirmed false confession cases with cases in which each author vouches for the innocence of defendants whose guilt has nevertheless been upheld through rigorous appeal.⁷

Scientific journals are vulnerable when peer-reviewing articles submitted about novel areas of study. After all, if the area is so novel, who is in a position to critique that article other than a colleague in such an area of few colleagues that know the fine points of a “science?” How do scientific peers who are not familiar with the machinations of courts recognize veiled advocacy? They often cannot. Consequently, we continue to encounter admissions of failure of the peer-review process in novel scientific areas, from the controversy on autism to that of psychopathy.

To date, **systematic research of false confessions** has not been done. This could be done on the available data by

- 1) Deconstructing each of the undisputed false confessions by different aspects of the confessor’s vulnerability that prompted his decision to confess

⁴ Ofshe R and Leo R **The Decision to Confess Falsely Rational Choice and Irrational Action** *Denver University Law Review* 74 p 979-1122 (1997)

⁵ Leo R **Inside the Interrogation Room** *Journal of Criminal Law and Criminology* 86 266-303 (1996)

⁶ Kassin S **The Psychology of Confession Evidence** *Am Psychol* (1997) 52:3 pp 221-233

⁷ Leo R & Ofshe R **The consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation** *J Crim Law Criminol* 88:2 pp 429-496 (1998)

- 2) Deconstructing each of the undisputed false confessions by each of the techniques used to move that suspect from denial into acceptance of responsibility
- 3) Deconstructing each of the undisputed false confessions by the context of those specific cases

However, this scrutiny has not been undertaken. As a result, there is no scientific understanding of:

- 1) What interrogation techniques cause false confessions?
- 2) Are there interrogation techniques that are even more instrumental in predicting false confessions? How much more?
- 3) What is the importance of interrogation techniques relative to suspect vulnerabilities in causing false confessions?
- 4) How do specific vulnerabilities relate to false confessions; for example, why is it that some mentally retarded will confess falsely and others do not?
- 5) How do specific techniques relate to those who confess falsely; for example, what techniques are demonstrated to extract more false confessions in the mentally retarded?
- 6) How does the context of the interrogation relate to the interrogation techniques and their likelihood to cause false confessions?
- 7) How does the context of the interrogation relate to suspect vulnerabilities and their likelihood to cause false confessions?
- 8) Are there other suspect vulnerabilities that are significant but have not been studied?
- 9) How protective are qualities that make one less likely to falsely confess? For example, what suspects are less likely to confess when beaten during interrogation, and why?
- 10) How does a scientist balance qualities that make a person less likely to falsely confess with those that make a person more likely to falsely confess?

Until these questions are explored, the science of false confessions remains in its early childhood, and limited exclusively to civilian settings. The expertise one can offer limits itself to a few patches of studied components of this niche.

The first typology of false confessions was postulated in published manuscripts by Kassir and Wrightsman,⁸ advancing three categories of false confessions:

Voluntary False Confession

⁸ Kassir S & Wrightsman L **Confession Evidence** in *Psychology of Evidence and Trial Procedures* Sage Pub; Beverly Hills (1985)

Coerced Internalized Confession **Coerced Compliant Confession**

This typology draws validity from the publication of cases that show the qualities of each category.⁹ These categories are distinguished thusly:

Voluntary False Confession – A person incriminates himself without any remarkable intervention by law enforcement.¹⁰ Case reports describe those who seek to gain attention for a highly publicized crime,¹¹ to prevent another suspect from being held responsible (e.g. with co-defendants or gangs¹²), or because the person is actively delusional.¹³ The suspect thus initiates the confession for his own greater psychological or material benefit. John Mark Karr is the well-publicized case from recent memory; he took false ownership of the killing of child pageant queen JonBenet Ramsey.

Coerced Internalized Confession – A person who distrusts his memory for the period of the crime in question (from intoxication, shock, overwhelming guilt, or emotional bereavement)¹⁴ is seduced by interrogators whom he trusts and believes are aligned with him. The interrogators, by suggestion, engender a false memory in the suspect, who internalizes this idea to the end of taking responsibility for the crime.¹⁵

Coerced Compliant Confession - A person who initially denies responsibility is subject to a noxious or threatening questioning, so much so that he offers a self-incriminating statement in order to terminate the interrogation.¹⁶

Under conditions of the coerced compliant confession, the suspect retracts his statement once removed from the coercive interrogation setting. There is no case study published about a person who elaborated additional confessions in the absence of coercion; the coercion would need to be applied and reinforced.

Cases of false coerced compliant confession reported in the scientific literature involve single confessions, not multiple confessions with multiple interrogators over an extended time, let alone months.

⁹ McCann J **Broadening the Typology of False Confessions** *American Psychologist* 53(3) March 1998 319-20

¹⁰ Kassin S & Wrightsman L (1985)

¹¹ Ibid.

¹² McAnn 1998

¹³ John Mark Karr article of prosecutors calling him delusional

¹⁴ Gudjonsson G (2003) p 234

¹⁵ Gudjonsson G **Psychological and psychiatric aspects of coerced internalized false confession** *J/Forensic Sci Soc* (1989) 29: pp 261-269

¹⁶ Kassin and Wrightsman 1985

There is no precedent in scientific literature for a case of continued confession in the absence of continued coercion. In Omar Khadr's case, he not only continued with his self-incriminating account, and did so with different interrogators, but elaborated further with details well beyond what interrogators even knew he could provide.

In 1997, the Kassin and Wrightsman typology was challenged by an Ofshe and Leo proposal for an expanded classification system based upon their casework.¹⁷ This latter typology has not been researched with any scientific methodology in order to establish validity or reliability.

Ofshe and Leo's casework, furthermore, is one in which they declare "unreliable" confessions in the overwhelming majority of cases in which they offer a written opinion to courts. The typology is therefore a product of efforts marked by a substantial error rate.

Dr. Gudjonsson has studied and demonstrated the significance of **compliance** and **suggestibility** in studies of prisoners who dispute their confessions, and cases of coerced compliant and coerced internalized confessions, respectively.¹⁸ Compliance and suggestibility are the most studied vulnerabilities relating to false confessions. There is also a demonstrated overrepresentation of mental retardation (now called intellectual disability in order to be more sensitive) among those who have falsely confessed.

Further studies have identified subpopulations which are more likely to be suggestible. Under interrogation that gives negative feedback to the suspect, those who are suggestible and who come to distrust their memory are more vulnerable to adopting false suggestions.¹⁹

Behavioral scientists can educate the court about the typology of false confessions. In addition, the behavioral scientist can educate the court about the concepts of suggestibility and compliance and how they relate, in the research available, to the established typology of false confessions.

Based upon confirmed cases of false confessions, behavioral scientists can educate the court about qualities of the interrogations of those cases, vulnerabilities of those suspects, and the context of questioning in which these false confessions occurred.

¹⁷ Ofshe R, Leo R **The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions** *Studies in Law, Politics, and Society* 16 pp 189-251 1997

¹⁸ Gudjonsson 2003

¹⁹ Ibid.

As in other nascent sciences, the behavioral scientist must inform the court of limitations of such understandings in order to avoid misleading the court into applying the weight afforded to more rigorously studied concepts.

Behavioral scientists do not have the expertise to inform the court about the reliability of a confession, in either a juvenile or adult. There is no established methodology to ascertain whether a confession is “reliable.”

“Reliability” as a word in the sciences refers to the consistency of a measure, an account, a result, over time. Therefore, a reliable statement means that it is a statement that would be consistent the next time it is offered. There are a number of reasons why a person might change aspects of their statement, many of which may reflect on how thoughtfully one is advocating his case, as supposed to any cognitive deficit of lack of maturation. In Mr. Khadr’s case, his representations to interrogators clearly protected himself and his parents.

There is no expertise to ascertain whether a self-incriminating statement is reliable, any more than a behavioral scientist can opine whether a confession is true or not. The closest an expert can approach is to perform the same function the trier of fact does - investigate the consonance between a statement and the available evidence.

At the same time, one cannot assert that a person’s statements are unreliable, to the end that they should not be believed; only to then endorse, wholesale, his allegations of torture as if they *are* reliable. Either one believes an informant or not, and is able to provide a reason for same. Child witnesses provide testimony in a range of cases, and some children are capable of giving an accurate depiction of events in question.

No research to date has examined true confessions, forced true, and false confessions in those captured suspects who regard their interrogators as enemies from the battlefield. There are fundamental incompatibilities in homogenizing understandings of all crime interrogations with the wartime setting, and furthermore to fighters of Al-Qaeda and other like-minded opponents of American forces:

- 1) Fighters are prepared to resist interrogators at capture, especially those who are taught that death is martyrdom and not to be feared if threatened. This is particularly relevant to the instant case; Col. Randy Watts recalled the scene as one in which the fighters at the scene demonstrated their willingness to fight to the death. Witness statements about Omar Khadr demonstrate his readiness to be a martyr.
- 2) Trust is implicated in cultivating false confessions in a suspect who believes a police officer is his advocate. Since fighters are trained to hate the enemy, such trust cannot be so readily engendered in wartime settings.

- 3) American forces, to indoctrinated Jihadists ideologically willing to martyr themselves, are infidels bestowed with frightening qualities real and exaggerated. As such, there are inherent pressures about the consequences of incriminating one's self that are not transferable to police interrogations in civilian settings.
- 4) Those interrogated in wartime settings uniquely recognize that their statements impact their cause and others whom they are fighting for. Suspects in day to day crimes are primarily thinking about themselves and the consequences to themselves.
- 5) Those interrogated in wartime settings confront the pressure of the reaction and rejection of their peers if they cooperate. This is an additional barrier to self-incrimination that is not attendant to daily crime settings. The closest interrogation setting that replicates this pressure in civilian settings is that of gangs. Not surprisingly, of the reported false confession cases, **none** of those in case studies involved gang members. Gang affiliation is a protective factor, for those reasons, in any age.
- 6) False confessions in gangs have been reported, and motivated by junior members who protect senior members, or adolescents who recognize that they will be treated more favorably by courts than the bosses of gangs who are of age. None of these factors are pertinent to the Khadr matter, because all of Mr. Khadr's potential codefendants were killed, and he knew they were killed. There was no one for him to take the fall for.
- 7) Fighting units are indoctrinated with a loyalty and code that goes well beyond even gangs. Gangs demand and engender loyalty for the group effort; interrogator police officers, however, are not therefore the identified enemy and source of threat as the interrogator from enemy forces. To that end, combatants in war do not even resemble gang members
- 8) **There are no proven cases in these case studies of false confessions among those captured in wartime settings.** If Mr. Khadr's case is resolved as a false confession and reported, his will be the first demonstrated in the science literature as a person who confessed falsely to a sworn enemy to a crime that he did not commit. Whatever dynamics or factors are relevant at wartime to cause false confessions, there is no body of cases to research from.
- 9) Combatants in the current conflict commonly assert that they have falsely confessed as a tactical matter. However, cases among Jihadists of false confessions in which a person takes responsibility for crimes not committed – in which there is no prospect of confusing the enemy or obfuscating an examination – have likewise not been reported in the scientific literature.
- 10) Finally, the very structure of military handling of prisoners differs from police interrogation. Those captured may be held indefinitely. Thus military interrogators, as noted by Interrogator 2 in this case, are content to slowly draw out an account, allow contradictions to develop, and know they will be able to sit down with a suspect the next day or later that day, indefinitely. The suspect is

not going anywhere. The approaches by military interrogators respond to different dynamics from the day-to-day urgencies of police officers and prosecutors. Until research can demonstrate that what we learn about interviewing in one setting translates into an interviewing that features different inherent pressures and structure, there is no established body of knowledge.

Apart from the above research and studies that further explore populations that are more suggestible, and factors affecting compliance as a construct, there has been no research that directly informs a scientific understanding of false confessions to murder, and no studies of prisoners in armed conflict.

Dr. Kassin has conducted studies in which college students participate in mock interrogations involving crashing a computer. He has derived published conclusions from these. Other advocates for expert testimony in this area cite studies of social influence, such as the research of Stanley Milgram, Ph.D., in order to safety pin the ribbon of “Science” onto their proposed testimony.

However, general studies of obedience, personality, college students disconnected from the rigors of an interrogation’s real consequences, and other populations who are not confronting the unique scenario of the suspect being interrogated for murder do not inform an interested professional about the unique dynamic of suspect and interrogator squaring off with competing pressures confronting the suspect.

The Kassin research has inspired other researchers, including one single study focusing on children and adolescents, to set up similar mock exercises. These mock interrogations for computer crashes and test cheating, for example, define the body of information upon which the coterie of false confession expert witnesses touts science. Yet the irrelevance of this research to a live interrogation for murder, much less in wartime by the enemy, is undeniable.

In recent years, the behavioral science literature has published a number of articles and book chapters that engage the issue of disputed confessions. Most of these articles are reviews of previous literature, most of which are themselves reviews. A coterie of authors in this area includes Dr. Kassin, Dr. Leo., Solomon Fulero, Ph.D., and Dr. Gudjonsson. On different publications, one or more of these authors or their students have collaborated. Occasionally they have been joined by law professors.

While not disclosed in the articles when submitted to scientific periodicals, each of the four authors above are highly active expert witnesses whose theories have come under increasingly critical scrutiny in recent years. In response to numerous *Daubert* and *Frye* decisions across America that have disallowed their appearing in courts to testify in the nature proposed (some of which employing scathing dismissal), these authors have

retorted by exploiting the scientific community's periodicals as platforms for what they present as "reviews." The unstated purpose of this literature in a scientific community whose standards demand disclosure of financial interest, however, is to establish a foundation upon which they can legitimize their involvement as compensated witnesses in disputed confession proceedings.

Regrettably, the review articles slickly cobble together articles on peripheral topics and tout the computer crash studies in order to promote the illusion of a "science" of false confessions. In addition, these works peddle the relevance of social science research on social influence to the understanding of false confessions. Invariably, the articles cite The Innocence Project -- given the great respect that this organization has garnered in exonerations resulting from its efforts -- in order to absorb the stardust of virtue afforded this organization by the general public and to dramatize the consequences of false confessions.

Unfortunately these articles specifically avoid any consideration of what has not yet been researched, what has not yet been established, in order to prevent courts from erecting boundaries for where psychologists and psychiatrist can assert their relevance.

The origin of this conscious avoidance by the aforementioned coterie is the 1997 article by Dr. Kassir in *The American Psychologist*, which includes the following paragraph:

"The topic of confession evidence has largely been overlooked by the scientific community. As a result of this neglect, the current empirical foundation may be too meager to support recommendations for reform or qualify as a subject of "scientific knowledge" according to the criteria recently articulated by the U.S. Supreme Court (Daubert vs. Merrell Dow Pharmaceuticals, Inc. 1993). To provide better guidance in these regards, further research is sorely needed."²⁰

It is this paragraph that haunted the boutique industry of false confession "experts" in the early years of this decade, repeatedly cited by prosecutors arguing to exclude such testimony. That one of the leading polemicists of the false confessions would faintly acknowledge shortcoming provided a mirror for courts to hold up to ask, "What has the field done to advance itself beyond being not yet ready?"

Answer in 2010: Very little.

And with respect to the area of juvenile false confessions, virtually nothing.

²⁰ Kassir S *The American Psychologist* ©1997 p231

2) What is the body of understanding of the science of disputed (including false and forced) confessions among juveniles, and what are its limitations?

Research of juvenile populations is limited to case reports of juveniles who have falsely confessed. This represents a small subset of an already paltry database.

Only two small stand alone research studies in all of the scientific literature *attempt* to inform the scientific community about juveniles in the interrogation setting.

The first study (not replicated) teaches that juveniles are demonstrated to demonstrate more suggestibility when given negative feedback from questioners in a mock exercise.

This study is informative in that it demonstrates a theoretical pathway for how some adolescents may be more likely to adopt a false suggestion in the interrogation setting. Unfortunately, because the study involves a mock exercise and does not weigh in pressures not to confess, it does not resemble real-world conditions of suspects being questioned for murder.

The criticisms from the question one, about the military setting, are especially important. Suggestibility's link to false confession relies heavily on the capacity of a law enforcement officer to engender confidence and trust. That potential is severely curtailed among war adversaries and especially so in the dynamic between al-Qaeda and the United States, where theological influences engender near delusional fears and misconceptions of Americans among many al-Qaeda, especially those with little exposure to the American justice system.

Lastly, this study is wholly irrelevant to application in the Khadr matter. The defense is asserting that Mr. Khadr was coerced, abused, and tortured. The suspect vulnerability that relates to such forced confessions is compliance.

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The Khadr defense touts the Redlich study to suggest that a scientific body of knowledge exists. It is the emphasis of this article that reinforces that such science is absent.

Apart from the irrelevance of applying a computer crash methodology to the dynamic of interviewing of a prisoner charges with murder in an armed war, the study authors disqualify the article with the following disclaimer that the study:

does not examine false confessions per se. Rather, the present study examines factors that may affect the likelihood of taking responsibility for a non-committed, noncriminal act

As in question one, there is no disputing that false confessions occur. Nor is there any disputing that adolescents may falsely confess. Beyond that, the fundamental questions relating to juvenile forced confessions and false confessions have not been studied. At all. Whatever is known about false confessions, beyond the fact that they occur in all age groups, essentially derives from research on adult populations.

- 3) ***With respect to the assertions of the Khadr defense effort on confession evidence and juveniles, have these ideas been tested in a setting relevant to this case? How?***
- a. ***Have these ideas been demonstrated to have an established error rate?***
 - b. ***Have they established themselves to be generally accepted in the scientific community?***

“Juveniles do not have the same capacity for mature reasoning, risk assessment, and impulse control as adults”

This generalization refers broadly to the changes one undergoes in passing from adolescence to adulthood. Maturation of reasoning comes with experience. By the same token, a forty year old has more mature reason than a thirty year old. That does not mean that the thirty year old cannot apply mature reasoning. Relevant to this case, the defendant responded to the interrogation, confronting perception of proof, as would an adult.

There is absolutely no research to demonstrate that fifteen year olds do not have the capacity for mature reasoning, risk assessment, and impulse control.

It is difficult to generalize about impulse control as a matter of age in a defendant like Omar Khadr. Coming out of a strict and xenophobic religious climate, he might have been far more controlled as a fifteen year old than in later years as a less isolated person and with too much confidence for handling Westerners in interviews.

One cannot presume the effects of risk assessment from age alone. A person of age 15 may be risk averse given a lack of life experience; older and more confident, that same person may be more willing to engage risk.

There is no evidence available to this examination that Omar Khadr exhibited immature reasoning, poor risk assessment, or impulse control problems. Given a directive by the father he respected to travel to Khowst, he did. He worked alongside adults who wanted to kill Americans, and so did he. So did his adult father. There is nothing immature about that reasoning.

Omar Khadr responded to the pressures of interrogation with exceptional impulse control. He successfully resisted making self-incriminating statements and employed self-serving statements or misled interrogators about his family.

Muses Interrogator 5, “With the persistence in his sticking to his story, I would not be surprised to see him having received some training, like SEER training. He tried as many different angles to keep us from knowing the truth.” The interrogator adds, “Without the video, Omar Khadr was even more resistant to interrogation techniques than quite a few adults for whom I had utilized the same interrogation techniques.”

Given the range of interrogation techniques employed, and the input to interrogators from others, Mr. Khadr’s discipline to regulate his responses – even after perception of proof guided his response to the video stills, is more than many adults would exhibit under the same circumstances.

With respect to risk assessment, there is no indication that by communicating with American interrogators, Omar Khadr displayed immature risk assessment. One cannot imagine what his course might have been had he not elected to opt to scotch his relationships with American interrogators by being party to dramatic claims about being abused in 2002 and 2003.

There is no evidence that Mr. Khadr’s decision to offer self-incriminating statements to Agent Fuller, Interrogator 1,5, Interrogator 11 and others was any less practical than an adults would have been, given the proof with which he was presented.

“Impetuous and ill considered actions and decisions are more understandable among the young”

Impetuous and ill-considered actions are not well understood at any age. That is why they are deemed to be impetuous and ill-considered.

Impetuous decision-making is not used to negate an adult’s self-incriminating statement.

With respect to Mr. Khadr, this idea is wholly irrelevant. He participated in the same decision to fight to the death as all of those adults around him. His decision to throw the grenade came during a lull in the fighting. Mr. Khadr specifically decided not to

surrender when he had the chance to do so. Rather than impetuous and ill-considered, it was deadly accurate, and executed after a prolonged battle in which Omar Khadr had not exhausted his ammunition, but rather had saved it.

Mr. Khadr's self-incriminating statements were not impetuous after all, not were they ill-considered. Each included selected details with nothing further. Psychological testing did not yield any evidence for impulsivity in this defendant.

Discussion of impetuosity is irrelevant to the examinee, and has not been researched to the end that such assertion has any reliability.

If the defense asserts that Mr. Khadr was tortured into giving self-incriminating statements, then the notion of impetuosity is irrelevant. Torture is coercive to interrogations because under conditions of torture, the decision to confess is not impetuous, but coerced.

"Told them what they wanted to hear"

Omar Khadr was asked, in our interview, what interrogation techniques most approximated torture to him. He replied, pertinent to the questioning in 2002 and 2003, "Threats of rape."

Interrogator 1's story of an Afghan prisoner raped in an American prison was upsetting to the defendant. But still it did not elicit self-incriminating statements. Mr. Khadr proved himself to be impervious to this external pressure.

Even when acknowledging responsibility for killing Sgt. F.C. Speer, Omar Khadr advanced the idea that he lobbed a grenade with lethal accuracy over his back from a crouching position. This faltering portrayal would diminish his criminal responsibility in spirit. So even as Interrogator 11 was building on his previous disclosures, Omar Khadr was being self-serving in his statements (including his account that he was a mere translator sent to Khowst). Self-serving statements are not what coercive interrogators are aiming for.

Omar Khadr provided a number of disclosures of actionable intelligence about other al-Qaeda training facilities and figures. Since interviewers don't know what they don't know, one can hardly suggest that he told them what they wanted to hear. There is no indication that Mr. Khadr was not discreet about what he disclosed to them as well, stopping short of the whole truth.

"Susceptible to Authority"

The defendant has proven to be devout. The authority that guides him is far greater than Interrogator 1. The Islamists had contempt for Americans, regarded as infidels and Satan.

Even were one to ignore Omar Khadr's allegiance to Allah and al-Qaeda's message that it fought in the name of Allah, Omar Khadr was more responsive to another authority who would have demanded silence – his father.

Were Omar Khadr to be responsive to American authority, to the degree attributed to his self-incriminating statements, he would have surrendered to the United States military when he was a solitary combatant holding a grenade and contemplating his next move. He aimed and chose to throw a grenade instead.

"Mr. Khadr's behaviors and responses during these years of abuse and coercion can be understood to be driven primarily by a desperate fear response and an attempt to survive by saying what was necessary"

The available evidence of Mr. Khadr's interrogations demonstrate this statement to be untrue. The defendant repeatedly has declined to respond to questions that would speak to his actions preceding his arrest. To this day, for example, no one is aware what he was doing when the compound started shooting. Perhaps he wounded more than one victim?

But Omar Khadr has been very guarded. He solicited friendly relationships with others at Bagram and Gitmo and succeeded in forging those connections without having to disclose on his case. When he did talk to FBI SA Gregory Fuller, Omar Khadr's window of openness closed quickly. He has been unafraid to keep his captors at bay.

A remarkable quality of Omar Khadr was the relative lack of fear he exhibited when speaking to interrogators. Interrogator 11 noted that he openly requested to be able to speak with her whenever possible. When her visits scaled down because she believed he had no more information to provide, she remembers him to say, "Why are you not coming to interview me?" Interrogator 11 adds that Mr. Khadr was the only detainee who communicated with her who did not endeavor to hide it from the other inmates.

Neither did Omar Khadr demonstrate a fear of pain. Hospital personnel at Bagram do not recall him to be drug seeking; neither does the medical officer at the Bagram camps who rounded on him after Mr. Khadr's release from the hospital. In addition, the defendant refused prescribed pain medicines on a number of occasions.

Over the course of his incarceration, Omar Khadr has experienced a number of sports injuries. Despite being advised to rest, he returned to action. This too demonstrated that the defendant does not fear pain.

Moreover, the defendant went on a hunger strike. That also reflects his willingness to endure discomfort.

The notion that Khadr would say whatever was necessary to impress interrogators is contradicted by how the military has been content to leave his self-serving statements about his involvement unamended. The notion that he was a mere “translator” has been completely contradicted by his activities on camera – in which he took as active a role in bomb assembly as anyone he might be translating for.

Furthermore, in the confrontation with US troops, Omar Khadr was a frontline fighter who took up position as other fled the home. When American forces returned to the scene one month later, villagers told them they had found additional fighters in the rubble. Yet it was Mr. Khadr who took up position with the other three. Mr. Khadr’s role in the Khowst house, beyond translating, remained unchallenged.

The defendant conceded that he had watched the video of the attack on the USS Cole (which would have been unnecessary for being a translator). On the bomb-making video, the defendant acted with the comfort and lack of supervision of a person who could reliably handle his part of the bomb assembly assignment. Were Mr. Khadr to have been to an al-Qaeda training camp, the notion of Interrogator 1 turning over furniture in “Fear Up” or another interrogator with tattoos would have been more the mundane experience.

Omar Khadr’s desire to help himself is not to be confused with a desire to please. It is my professional opinion that the affidavit he submitted demonstrates his determination to do and say whatever he believes he must in order to help his case.

“Any statements, disclosures, or confessions by Mr. Khadr during the immediate post-op period, convalescence, or extended detention at Gitmo are limited in their factual basis and validity by his physical and mental state of mind during that period.”

Mr. Khadr was medically cleared for interrogation upon his discharge from Bagram Hospital. Available records and interviews of the physician-in-charge, nursing, and Bagram medical liaison do not yield any evidence that Omar Khadr was not capable of participating in an interrogation once he was medically cleared to do so.

The principle behind the above statement has not been researched. However, it would apply to any confession or legal interview. Specifically, any statement provided by someone who is mentally impaired may be limited in its factual basis or validity – whether a person is post-op, convalescing, in extended detention, or sitting in a doctor's office or in a restaurant, for that matter. It is not the setting which defines issues of capacity, it is the mental state itself.

Prisoners are routinely treated in hospitals. Many receive acute care in hospitals, emergency rooms, even surgical centers before being transferred to custody. Doctors see them and medically clear them, and interrogations, once medical clearance has been achieved, are commonplace. I have conducted scores of bedside assessments relating to testamentary capacity, competency to write a contract, competency to plea, competency to stand trial, competency to waive Miranda, competency to refuse medicine, and have interviewed witnesses for legal proceedings having obtained medical clearance about their mental state and their mental state as it relates to any precarious medical condition they may have. There was nothing compromised about the information they provided. Bedside arraignments occur within the justice system as well. There is no scientific precedent for the notion that an individual in a formal care facility is mentally incapable of being interrogated.

The Bagram field hospital operated under rules set up by Col Post. His intention was to engender a sense in the Afghan people and all patients within the hospital that there was a boundary between patient care and the prosecution of a war. This policy is politically astute and safeguards against the encroachment of passions bleeding over from the battlefield. As for whether any science has established that a person who is receiving medical care, once medically cleared by physicians, cannot be interrogated, no such scientific foundation exists.

With respect to a statement being limited by a person's physical state, the above points are all the more operative. Are we to say that a quadriplegic cannot be interviewed because he is "convalescing?" That a person with cerebral palsy cannot be interviewed in his college class because of his physical state? That a crime victim with chronic pain from cancer cannot be interviewed? Of course not, and there is no research to demonstrate that information yielded from people who have already been medically cleared is not factually accurate or valid.

Again, people with physical injuries are routinely interrogated while they are convalescing from physical injuries – once their medical and treatment team has cleared them for interview and assessment.

His status as a youthful adolescent

The entire discipline of child and adolescent forensics is predicated on the notion that people under eighteen have valuable information to impart and must be interviewed about that information. Adolescent crime is commonplace. Fifteen year old offenders are well represented in courts around the world.

Fifteen year-olds routinely provide information to law enforcement and to interviewing mental health professionals that is used to resolve legal proceedings. Fifteen year olds contribute valuable input as defendants, witnesses, and crime victims; as witnesses in personal injury litigation; and as residents in the home undergoing a custody or parental rights evaluation. There is no wholesale negating of fifteen year olds that occurs anywhere in the science of forensic psychiatry or psychology.

That said, Omar Khadr was mature beyond his fifteen years. Even were he not to be, there would be no reason to question the factual basis of his statements or their validity because he is 15. The factual limitations of Omar Khadr's statements, be they to law enforcement or to interviewing psychiatrists and psychologists, relate to his willingness to be truthful, not to his age.

Studies have shown both that adolescents are more willing to admit guilt than are adults in the face of similar questions, even to the point of falsely confessing to actions that they have not committed

There is no research that has demonstrated that adolescents are more willing to falsely admit that they committed a murder of a U.S. soldier than adults. There is no research even evocative of such an assertion.

Ours is not a reductionist discipline. Each individual has relative strengths and weaknesses. The strengths may endow a person with extra resolve to avoid providing a self-incriminating statement in the face of perception of proof or internal or external pressures to do so.

By the same token, vulnerabilities may render an individual more accessible to the various pressures of the interrogation setting, resulting in a true or false confession. It is the strengths and vulnerabilities that have a scientific foundation, not an arbitrary and unresearched presumption deriving from virtually no research.

Whatever juveniles identified as having falsely confessed, there are many factors that have never been studied which bear no relevance to development and physiology. It may be, for example, far simpler to identify false confessions in juveniles because they have an available advocacy that adult suspects may not have.

4) *With respect to Omar Khadr, what relevant vulnerabilities and strengths distinguished him in the context of his interrogations in 2002 and 2003?*

Captured at age 15, Mr. Khadr portrays himself as a child who stumbled haplessly into armed conflict and then, in successive pratfalls of his custody and interrogation, spirited along by nefarious others taking advantage of him along the way.

The available history in fact distinguished Omar Khadr as advanced from other fifteen years-olds in a number of respects relevant to the psychiatric-legal question at hand. To assess Omar Khadr through the stenciled cutout of the generic fifteen year old would be invalid, from a forensic psychiatry standpoint.

The defendant came to Khowst as the son of a widely known senior al-Qaeda official. Mr. Khadr had followed his father as a translator who spoke two languages that the elder Mr. Khadr did not. His brothers were in al-Qaeda training camps, and in his interviews in 2002, he indicates that Omar Khadr trained formally with al-Qaeda as well.

So cultivated was Omar Khadr that he received a number of weeks of individual training. His family bills itself at an al-Qaeda family, not merely relatives of a person who had the shrewdness to funnel charity to military training operations.

As he relates in our interview, at the very least Omar Khadr learned a lot just by listening and translating. He expected to rejoin his father at some undetermined time in the not-so-distant future. Instead, he chose to fight, making the same committed ideological decision of the adults around him. His actions demonstrate that he was a trusted fighting confederate who was trained in the weapons he used and advantaged by worldly sophistication and language skills.

The favorite son, Omar Khadr earned that appreciation within his family for a personality that is “very, very, cool.” Interrogator 5, who has sampled his share of al-Qaeda detainees (that would appropriately stock a research project to make this a legitimately scientific endeavor), observed of the Khadr he interviewed, “I did not see the same turmoil in Khadr’s eyes...others feel like they are about to be shot; he was not terrified...Omar Khadr never had that same urgency.” And so Omar Khadr brought the strengths that define *him* into interviews with various questioners of different styles and approaches.

And offered nothing self-incriminating.

The defendant’s father contributed to Omar Khadr’s prominence among others at Bagram and Gitmo. In interviews, the defendant minimizes with a “my father knew everybody,” as if his linkages to al-Qaeda were just another constituency for a local bon

vivant or the grocer in a town of 15,000. That ignores, of course, that were Ahmed Khadr was not Afghan, did not spend a lot of time in Afghanistan until no earlier than 1997, and needed his son Omar to have those communications with other Afghans he knew so well. And, that the Khadr's were running from place to place once the war started in 2001. Not what you would expect from someone who was "friends with everybody."

But what one does expect from an effective fundraiser and person who is "friends with everybody," as was Ahmed Khadr, are excellent social skills. Mr. Khadr's courtly charm and self-possessed manner are more than an institutional personality. Rather they reflect the seasoning of the person who has been to many places and seen many things. He is, perhaps not ironically, "friends with everybody."

Mr. Khadr describes being very comfortable around different types of people, and exposure to different peoples since his time in Peshawar, Pakistan. It was there that the defendant learned Farsi and was some working Urdu. It has been easier for him to build rapport in custody because he is westernized.

To that end, Omar Khadr was a more seasoned and worldly 15 year old than others – and his loving father was comfortable sending him alone to a hotbed of active fighting. Mr. Khadr makes it clear in our interview that he had done translation for his father on numerous occasions, and that he was comfortable traveling alone, that he had taken care of himself long before that, given the traveling of his parents.

Observes Interrogator 1, who like Interrogator 5 found less success with Omar Khadr than with adults, "He is absolutely more seasoned than the other al-Qaeda fighters. The Afghans were mostly regular farmers, he's been to many places, done many things, and he's seen more and lived more than the others he was fighting with."

The bearing of Ahmed Khadr was not so much that Omar Khadr was powerless to resist that authority. Omar had already witnessed his older brother Abdurrahman defy the strictness of Ahmed Khadr's direction, and later repeatedly get himself kicked out of an al-Qaeda training camp. Abdurrahman's independence was known to Omar Khadr; he observed Abdurrahman to find his own way without alienating the family or being rejected by his father. Omar Khadr had options about how far he had to go for his father. An apt pupil, it was Omar Khadr delighting on videotape, far from his father, in the prospect of killing Americans.

Abu-Laith was a well known leader of fighters who did not fully affiliate with al-Qaeda until well after the battle at Khowst. The Libyan was certainly aware of Ahmed Khadr's prominence, and as a person with less established ties to al-Qaeda but needing their financial and personnel assistance, he was in no position to abuse the gifts bestowed

upon him. It is for this reason that Omar Khadr's notion that Abu-Laith "took advantage" of him and his father strains credulity.

The last thing Abu-Laith, who had a reputation for taking good care of his men and who Mr. Khadr recalls as competent would seek out would be to antagonize the al-Qaeda leadership by embroiling the son of a prominent member against his father's understanding. Abu-Laith was not subsequently expelled for having inappropriately entangled Ahmed Khadr's son; he formally joined al-Qaeda, some months afterward.

The compound was well-fortified and fought fiercely. Abu-Laith and Omar Khadr had the misfortune of encountering the battalion of Major Randy Watts. A lesser force might have produced a less salient outcome.

In our interview, Mr. Khadr added:

DR. WELNER: Do you think your father would be proud of you

if he were alive?

MR. KHADR: I don't think I did anything that he would have

told me not to do.

Omar Khadr was the only person to survive that raid, and he survived even as he was wounded. A scientific opinion would conclude it was his training that saved him.

The defendant was the lone survivor and recovered from a bombing onslaught. His reaction to the battle and shelling, and even to being injured in the battle, was to keep himself alive, demonstrating his presence of mind.

In our interview, Mr. Khadr would have one believe in our interview that he was standing in the compound like some sort of blind totem, with other fighters leading him from place to place as the bombs fell and rounds flew. Yet by his own admission he was not cowering, not tucked away, not fleeing the scene like other women and children, not feeling around for his translator pencil and pad like some overmatched clerk, but armed to the teeth and taking up a position just as other fighters, and trusted by them to do so. Almost accurate with a hand grenade, after all, would endanger the fellow fighters as much as anybody.

The defendant emerged alive from a compound that was decimated to the end that all the dead could not even be found for all of the rubble. His maturity to engage in the war activities of his chosen pursuit manifested by his fulfilling his stated goal of killing Americans, via a grenade thrown by his own hand. He made that decision during a time

affording ample deliberation, and killed with his one grenade. After he looked at his watch and saw the time. After which he ran and was shot. Then, saved by Major Watts, he begged the American forces to kill him. Not because he was fearful, as in our interview he conveyed no such fear or cognitive disorganization. Rather, according to witnesses, Omar Khadr wanted to die a “martyr,” like so many other mature if misguided idealized adults in the Moslem world today.

And when he was wounded, Omar Khadr made a remarkable recovery. He showed and continues to exhibit physical and psychological resilience.

There is no evidence from Bagram or Gitmo of Mr. Khadr having renounced an association with his father. That would have been possible, and others have done it in American custody, even claiming to have converted to Christianity. But Mr. Khadr was ultimately more resistant to the abandonment of his cause (and its own consequences), especially as someone looked upon kindly by other detainees for whom his father was.

His brother Abdurrahman (who himself has renounced) noted that their father warned him that “If you ever betrayed Islam or if you ever sell out on us, I will kill you myself.” Whatever Omar Khadr weighed in his exchanges with American soldiers, the countervailing force was the unequivocal attitude the elder Khadr had articulated, at least to his brother if not also to Omar Khadr himself. And Mr. Khadr’s conviction is true to this day.

Now take a step back and consider the scientific relevance of one of Dr. Kassin’s computer crash experiments.

Omar Khadr was aware of his father’s connections, in that he was only too ready to disclose this to other detainees (rather than to represent that he was Farhad (as well as Farnad) Akhbar as he had to interrogators).

Correspondence of Mr. Khadr with his family only reinforces his unwavering attachment to his ideology. Faith is a component of resilience, and being devout distinguishes Mr. Khadr’s faith-based resilience from those whose faith is weaker.

Family attachment feeds off of these expectations, and Mr. Khadr is proud to engender the pride of his family. In 2003, his mother wrote of being a “most proud mother” and referred to him as her “little precious hero.” Notes demonstrate that he is asked by others to lead prayers, and guards report that he has been sought out by others as a block leader. He cultivates relationships with some of the most senior Jihadists in Gitmo.

Long before this stature, Mr. Khadr was translating for the other inmates and for Bagram staff. He therefore had unusual access to other inmates and staff that no other inmate would have. This is the same access he enjoyed to his father's contacts, to Abu-Laith in the Khowst house, and later to the other detainees in different blocks. To that end, just as Omar Khadr heard every word of the instructions about building explosives, he heard every word in other conversations passing from Arabic to Pashto and back, including those conversations his father had. Being a translator for your father means never having to expect to be told, "Leave the room, we're having a business conversation."

According to the detainee, he was interacting with others at Bagram who gave him mixed messages. Some advised him to cooperate, others did not. He was housed with detainees who had been in the training camps, and training compelled detainees to say nothing.

Mr. Khadr was told to use a pseudonym when he was caught, and provided an innocuous story that distanced his involvement in wrongdoing until Interrogator 1 confronted him with the videotape that showed him making and laying down bombs.

It is therefore my professional opinion, with psychiatric certainty, that Omar Khadr's maturity when he entered custody endowed him with sophistication with which to engage interrogation particularly well. From the outset, he followed a plan to provide as little information as possible. He did not even disclose his name in spite of interrogation techniques that raised his fears.

The defendant, indoctrinated to martyrdom, is not cowed by pain as others might be. A former martial arts student, he possesses the attendant discipline of such a sport.

Both Mr. Khadr and Interrogator 1 point out that the defendant was presented scenarios of another prisoner who was raped in encounters prior to his viewing the bomb-making video. Mr. Khadr did not disclose any self-incriminating details in those encounters. Whatever his distress in those meetings, he revealed nothing self-incriminating.

Again, the pressures not to confess, be it the prospect of what would happen to him, the notion of betraying his father's Jihadism, the reaction of other detainees to whom he was royalty, maintained his silence. This demonstrates his long range view, his ability to extend his thinking beyond the exchange at hand, his appreciation of consequences his interviewers and all of the expert witnesses on this case –including myself – have no idea about.

Given that threats of violence would be coercive to some, that Mr. Khadr resisted those threats reflects upon his strength and resistance to interrogation.

Omar Khadr's "very cool" personality, by his account, enables him to distance himself from distressing things, and to view others with a detached but observant reserve. These qualities would have contributed additional strengths to the interrogations. Resilience in the face of traumatic events is enhanced by repression of emotions.

When the defendant came to Bagram, employees experienced him as a person trying to learn to survive. The examinee did. He gained the support of interrogators like Damien Corsetti, and confidence from interviewing other prisoners, and did not feel threatened. The defendant eventually found comfort in the face of homesickness and fears of being shipped to Gitmo.

The defendant, in our interview, shows the ability to adapt what he has been exposed to. He maintains a posture in an interview of many open-ended questions that is akin to how he would respond to an interrogation. He coolly dispatches questions with non-answers or claims to not remember, with the occasional detail alternating with the implausible. His responses are such departures from the available record that his ability to carry it off as much as he does is impressive as well.

When his evasiveness does not evade, he confidently endeavors to place the examiner on the defensive by posing his own questions to take over the interview, or by invoking "human rights." This, of course, is a very effective technique when one has to communicate with a self-effacing and universalist Westerner, all too ready to scurry into guilt when challenged about human rights and the Geneva Convention by a person whose confederates were flaunting beheadings of everyone from contractors to aid workers to journalists. But it is that brazenness to seek out debate that reflects Omar Khadr's strength – and a brazenness many adults don't have.

No doubt he has absorbed the language from his more senior mentors in Guantanamo, and his attorneys who feed him the sound bites. But professional judgment also teaches that you can't teach pigs to fly. Omar Khadr came into custody with the *je ne sais quoi* to parry interrogators like the callow young American louts who regaled him with tales about American prisons as they would the crude dead-enders they were used to dealing with. And parry them he did. Agent Dillard observed, "I was struck by how much more mature he was than my own son."

1, 2, 5 and the others got nowhere with him, even as he cultivated relationships with people like 15 to who were taken in by his age and sweet smile far more than the Afghans and Arabs with whom he was aligned. The defendant was clever enough, for

example, to represent that his father was dead, and with a story sure to inspire sympathy in a Westerner – that his father was killed by a mine.

Why? Because Omar Khadr was not some snot-nosed fifteen year old, but had whirled around far more than his interrogators. What is to be spooked by some foul military interrogators with ugly tattoos when you have hung out with bomb-makers who banally sport blood from the deformed hand of a person who didn't get the bomb-assembly right?

In our interview, the examinee expressed a sense of identification with Ishmael Beah, the Sierra Leonean author of "Memoirs of a Boy Soldier." Evidence demonstrates otherwise.

Appraises the defendant, Ishmael Beah, did "ten times worse things than the thing I'm accused of doing." The only difference "between him and me is that he was given a chance in life and I haven't been so far," adds Mr. Khadr.

Yet the story that Mr. Khadr studied is one of a person whose family had no affiliation to either side in the conflict; was removed from a family that was wiped out, leaving him alone; was plied with a variety of drugs that heightened his agitation; and was groomed by those he was with to kill those who had wiped out his family. Furthermore, the level of Mr. Khadr's worldliness far surpasses that of Mr. Beah.

The ease with which Mr. Khadr, who attacked and killed an American soldier medic with a grenade in the spirit of a Jihadist seeking martyrdom or financial reward, or both, co-opts the Beah narrative as his own, demonstrates the folly of declaring all fifteen year olds of equivalent vulnerability and ignorance for their actions.

In more unruly times in Gitmo, Omar Khadr was chronicled to be instigating other detainees to misconduct and uncooperativeness. Notwithstanding his protestations of his youth, his older peers were not dismissing him for his immaturity – they were following his inspiration!

Mr. Khadr exhibits composure in day to day stresses in Guantanamo. Larger, stronger, younger than most of the other detainees, and with an interest in martial arts, he nevertheless quietly requests transfer to another location in the face of unwanted attention from another detainee. For someone who had unusual sensitivity to rape, as many prisoners are, that would be enough to result in incident reports of a suitor getting a good pummeling. But Mr. Khadr is, as he always has been, "very cool."

At the time of his interviews, Omar Khadr did not have posttraumatic stress disorder. He exhibited no trouble with sleep, did not avoid discussions of what had happened in

the confrontation with American soldiers, and did not avoid returning repeatedly to a closed room with Interrogator 1 or any other interrogator, on any topic.

The available evidence reflects that Mr. Khadr was distressed over the prospect of being transferred to Guantanamo Bay, and of not being returned to his family. In the examination now, and in medical records since, he exhibits the entitlement of narcissism or spoiled celebrity, depending on whether one uses a clinical term.

Given the character that years of observation of Mr. Khadr demonstrate, it is my professional opinion that he felt greatly disappointed by his interrogators when they revealed to him that he was to be transferred to Guantanamo. His tearfulness was very much indicative of such disappointment and homesickness; his refusal to help with translating any longer reflects actions to empower himself in the face of powerlessness to stave off his transfer.

Once at Guantanamo, Mr. Khadr continued to communicate with interrogators. He was even more open with Interrogator 11 than others, and he exhibited a happy spirit, no distress, no avoidance, even sought her out. At that point, according to 11, the defendant was hopeful that he would be transferred to Canada. Again, his expectations were unrealistic.

First Omar Khadr aligned with the staff as a go-between to prisoners, hoping to curry favor and gain release within Afghanistan. When the videotape exposed his involvement as more than merely incidental, Mr. Khadr's hopes were dashed.

The defendant's second hope emerged in the form of the courtly and friendly communication he cultivated with numerous interrogators at Guantanamo prior to February 2003. So sensitive to him were the interviewers that just the out-of-character sight of Omar Khadr crying triggered an immediate termination of questioning and concerted psychiatric workup and.

January 2003 records reflect that the homesick Mr. Khadr was attempting to manipulate contact with his family, with whom he had not been in touch. His mood lifted the very next day without pharmacologic intervention or phone privileges. Records from his mother's correspondence in early 2003 note that the Red Cross had been in touch with his family and reported that he was being kept well.

Only subsequent to Mr. Khadr's rejection by the Canadians did Omar Khadr advance the idea, one well-worn among the al-Qaeda community with whom he interacted every day, that he had been tortured into giving his self-incriminating statements.

But records that did document Mr. Khadr's emotional changes recorded no signs of Posttraumatic Stress Disorder (PTSD) before or since. Mr. Khadr was upset from time to time, but never demonstrated a loss of function, hyperarousal and disturbed sleep, or decline in socialization or participation attendant to PTSD. Moreover, the defendant has not inspired a referral for medication treatment of PTSD.

He has been an active reader and athlete, written lovingly to his family, interacts with guards without hesitation, is interested in cars and reads about them, keenly attended to his legal case, and memorized the Qur'an in 2004. The latter point is notable, given the defense assertion that Mr. Khadr sustained some sort of blast brain injury. Testing by Dr. Porterfield revealed very superior memory.

Observed in court during the recent hearing, Mr. Khadr watched testimony of interrogators and sat in court for extended stretches. He was emotionally composed, observed to laugh at times, fully engaged, interacting with attorneys, and in no apparent distress.

In our interview, Mr. Khadr described some shortness of breath when witnesses were testifying; this reflects somatic anxiety and is normal for one to experience when one is sitting through litigation that affects one's fate. Mr. Khadr's primary response to the proceedings, that he repudiates them and feels they are unfair and do not adhere to international law, demonstrates that his emotions are enough in check that he can engage the intellectual arguments of his defense team, and does.

The medical record notes him to be in good spirits; there are no symptoms of somatic anxiety such as one sees with Posttraumatic Stress Disorder. Omar Khadr's absence of clinical symptoms demonstrates that he does not have Posttraumatic Stress Disorder from the events of his interrogation. His concerns to this day are most oriented toward seeing his family again rather than his experiences in custody; in our interview, he advises that he dreams primarily about his family, rather than any traumatic events.

By the defendant's account, he has always, since he was younger, been one to distance his mind and emotions from matters that he finds upsetting. In that vein, he relates that he never thinks about his father's death. He distances himself from his feelings about the different aspects of his being incarcerated, he states, because it helps him to cope. To this end, he utilizes reading, staying involved in activities, and other distractions.

Mr. Khadr is more defined by his resilience than by signs of PTSD.

The irritability described in this report may be viewed by some as a marker for Posttraumatic Stress Disorder. However, he maintains himself in good spirits when forensic examiners are not around; the defendant is forward thinking and contemplating

education and life in Canada after incarceration. It is his desire to interact with others, rather than to be isolated. This also speaks to resilience rather than the pathological effects of trauma.

In that regard, this man who was arrested as a fifteen year old fighting for al-Qaeda is assessed by the defense to have “strong potential for building healthy, positive relationships,” also demonstrative of his resilience. Of course, his father was adept at building strong and positive relationships, and parlayed that, his devout faith, and his deviousness into prominence within al-Qaeda and a family full of proud Jihadists.

Omar Khadr has a history of clinically significant anxiety, which he reportedly experienced at age 8. While at that time, he described difficulty functioning cognitively, there is no indication that Mr. Khadr has suffered cognitive dysfunction in the wake of the experiences he points to.

Furthermore, the defendant relates that he is not sure what he remembers relative to what he was told. A traumatized individual would not need to refer the examining doctor to an affidavit prepared by his attorneys and to use it as something of a crib sheet. The absence of memories reflects that whatever has happened is of passing enough impact to Mr. Khadr that he did not develop Posttraumatic Stress Disorder.

I also probed the potential that his experiences in battle, his life threatening injuries, or the carnage he witnessed before capture might have caused PTSD in Omar Khadr. According to the defendant, he remembers little of the first few days of his medical treatment. Subsequent to this, he expresses that he gained increasing hope that he would retain his vision and otherwise return to his full physical capabilities. Each of the mental health evaluations of this examinee yield different characterizations of his dreams, but he asserts he has nightmares relating to different aspects of these seven years. There is little other evidence for Mr. Khadr having Posttraumatic Stress Disorder from the events of this litigation.

An objective examination cannot ignore the concerted workup of possible PTSD spanning the days of early January, 2003. In a supportive assessment climate, with therapeutic intent and repeated follow-up, the psychologist did not elicit a history supportive of a PTSD diagnosis. It is possible, in my professional opinion, for Mr. Khadr to have developed PTSD at some point after he provided self-incriminating statements to interviewers in 2002 and early 2003. Whatever subclinical condition he has, the defendant’s resilience embodies him and renders him high functioning.

The defense reports introduced the idea that Mr. Khadr has been sexually abused. This history drew the most adamant resistance by Omar Khadr to our exploring, noting, “I have always felt unsafe...because I was young...it’s a detailed subject.” According to the

defendant, this threat is with him to the present day. He indicates that he has heard of detainees being beaten up for being cooperative with interrogators.

As he so emphasizes every sense of American misstep, real and illusory, as abuse and torture, it is my professional opinion that were Mr. Khadr to have endured some kind of sexual attack from Americans or their proxies, that would have been splashed across his affidavit.

That Mr. Khadr so resolutely refuses to discuss previous sexual abuse does not mean anything happened, in custody or out. However, what he demonstrates on this subject is far more indicative of the avoidance of PTSD than his banal flipping around of the words “torture” and “abuse.”

Avoiding discussion about a topic, because it is damaging to a legal case and personally emasculating, is different from avoiding discussions about something that is painful from PTSD. Mr. Khadr does not suffer powerlessness easily; confronting his bomb-making video brings him back, every time, to the moment he was, as Interrogator 5 says, “caught with his hand in the cookie jar.”

If the defendant makes Posttraumatic Stress Disorder an issue in this case, the question cannot be accurately addressed without a clear accounting of whether he was sexually abused by any of his brothers, his father, any other relatives, or anyone in al-Qaeda, including the costar he referred to on the bomb-making video as a “Teddy Bear.”

The Afghanistan warlord community is notorious for exploitation of the “dancing boys,” and homosexuality is rampant in Islam among the devout who divert their sexuality away from women and privately, to younger males who can be exploited.

The defendant also alludes strongly to related threats of assault from within Guantanamo. He is more cautious about mentioning threats from other detainees. It is clear, from his response, that Mr. Khadr harbors noticeably more fear from within the detainee population than an American.

Mr. Khadr indicates in our interview that threats of rape inspired his self-incriminating statements. This assertion now emerges in the aftermath of Interrogator 1’s openness about stories of rape happening to Afghan males in American prisons. However, according to Interrogator 1, threats of rape elicited little if any self-incrimination. However uncomfortable Mr. Khadr was with the fear up technique, he was responding to fear up techniques by maintaining his silence that had been indoctrinated in him long before he met Interrogator 1.

There is no evidence for Omar Khadr being psychologically compliant at Bagram or at Gitmo. He did not disclose information about the instant offense, his activities with al-Qaeda, or actionable intelligence to the interrogators there, until he was confronted with the videotape and the powerful perception of proof it engendered. Compliance with his father does not necessarily equate with trait compliance, especially given his lack of responsiveness to the interviewers.

Furthermore, there is no evidence that self-incriminating admissions that the defendant made to interviewers were some internalized account reflecting his suggestibility.

Likewise, there is no evidence for Omar Khadr internalizing responsibility in such a way that reflected the suggestions of an interviewer. Those interrogators who drew considerable information from him from October-December 2002 elicited intelligence about other al-Qaeda operatives, not the defendant.

5) With respect to the interrogation of Omar Khadr, what inspired his self-incriminating statements?

Prior to being exposed to the bomb-making video stills, Omar Khadr had disclosed very little to interrogators. According to Interrogator 1, revealing the videotape “opened the floodgates...his level of cooperation went up to about an 8 or 9 when we showed him the stills. We got vastly improved information detail,” he added.

The videotape is powerful evidence implicating Omar Khadr as an enthusiastic participant, active in bomb-making and mine placement and highly motivated to kill. That his Islamist handlers filmed him, not expecting that he would be captured, reflects the appreciation of Abu-Laith that Omar Khadr was an undeniably wholehearted participant, eager as he noted on the tape, “God willing, we will get a good number of Americans.”

Numerous interview approaches to the defendant yielded little. Records do not reflect Mr. Khadr being treated with any psychotropic that would have affected his decision to disclose. According to Agent Dillard, interrogations were conducted during daylight hours and with a comfort level that the defendant was not sleepy.

Meetings were not particularly long, and the defendant had an opportunity to collect himself between meetings, so introducing the videotape to him did not add to other interviews. Mr. Khadr’s response to being shown the videotape, to become forthcoming, reflects his **perception of proof** that the government now had devastating evidence against him.

The perception of proof from the contents of the video, in my professional opinion, would have been as powerful were Omar Khadr to have been 23 years old. His reaction to the videotape in our interview demonstrates how damaging he recognizes that videotape to be. Its impact is not overstated.

Interrogator 11 found Mr. Khadr to disclose far more background information well after his admissions to Interrogator 1. In their encounters, she was merely rounding out intelligence gathering as a prelude to his disposition. The encounters were benign, because there was no expectation that he had anything to offer, but rather a formality that yielded more than she anticipated.

Omar Khadr's continued cooperation, once he revealed as he had from the perception of proof, stemmed from an internal pressure to impress Canada to take him back. At the same time, according to Investigator 11, Mr. Khadr was bragging to fellow detainees about having killed.

This hope was not entirely unrealistic. After all, the defendant's father was arrested by Pakistan in the mid-1990's and charged with involvement in a serious terrorist attack. Canada repatriated Ahmed Khadr and his family then.

On the other hand, Omar Khadr had internal pressures not to confess, from fear and shame relating to how his father, to whom he was sensitive, would react, to the external pressure of other detainees he lived with.

Once Canada made it clear that they were not repatriating Mr. Khadr in 2003, the balance shifted substantially to pressures not to confess or to cooperate. Almost immediately, Omar Khadr retracted his self-incriminating statements and asserted that he was tortured.

6) With respect to the interrogation of Omar Khadr, how do the assertions of his affidavit relate to his decision to confess?

The documented record reflects Omar Khadr to be assertive and to make his needs met, without reservation. He readily complains of unfair treatment, confident that there must be some provision of international law that can protect him when America is involved.

It is therefore my professional opinion, with psychiatric certainty, that Mr. Khadr's personality is one to raise these concerns of abuse as they might arise. That he did not speak to the speciousness of his assertions about torture, raised at the point in time that they were.

Aware of the chain of command, and the supervisor's supervisors, and connected to many by language, Mr. Khadr has always had his cries heard by camp leadership. Immediately.

Despite Mr. Khadr's more recent and resolute assertions that he has been abused continuously until the present day, he acknowledges his own verbal abusiveness to Guantanamo personnel. On one such occasion in March 2005, the defendant reportedly harangued a black female guard as a slave, servant, bitch, and a crazy whore.

A person of that temerity not only is not being abused, but fears no repercussions from most of what he does. More importantly, he has the confidence to speak up about anything he perceives to be abusive, whether others agree or not.

Omar Khadr's documented history bears this standing out in other ways as well. In our interview, he indicates that his attorneys have told him that he would have a far more unpleasant time in an American prison, and I expressed my agreement with that idea in our interview.

The defendant responded by lamenting this issue on "human rights" grounds.

Someone, in my professional experience, who had truly been abused would have clamored to be moved elsewhere, willing to take the chance of disappointment, rather than to respond to this exchange with the canned "tsk, tsk" reminiscent of a college student in a mock-UN exercise.

Records from the BSCT team at Gitmo reflect the detainee expressed that Gitmo was "Not so bad, wouldn't mind staying there." There is no evidence for avoidance of the BSCT team at Gitmo such as might be associated with Posttraumatic Stress Disorder.

Disputed confessions must also account for the circumstances of how a person comes to retract the self-incriminating statement. In Mr. Khadr's case, he gave multiple self-incriminating statements to multiple examiners, extending over months.

Omar Khadr experienced pressure from other detainees about his cooperation with interrogators before he retracted his statements. The nature of that pressure is unclear. We do know that this detainee, who made no parasuicidal or suicidal gestures, who did not demonstrate symptoms of depression at that period, and who had enjoyed collaborative relationships with guards and the Gitmo interviewers in particular, presented in January 2003 attempting to manipulate telephone contact by suggesting he was suicidal.

Subsequent to Mr. Khadr's disappointing meeting with the Canadians in February 2003, the defendant retracted his statements and accused the United States of torture. After being cooperative to that point, he abruptly ceased, and at a time that he noted he was experiencing pressure from peers. External pressures to retract, whether from his peers, his attorneys, or his family have not yet been accounted for by released documentation. We do know that his claims of abuse came at the same time the International Red Cross was telling his family in Canada how well he was being treated.

The timing of the retraction coincides more with the pressures of others than the timetable of intelligence-gathering; interviews had largely wound down before January 2003 when Mr. Khadr, and were noting his difficulty with less contact, when the defendant retracted his statements in February

Mr. Khadr's actions in February 2003 and his behavior in custody going forward evoke instructions given to al-Qaeda operatives, as referenced in a training manual released December 7, 2001.

He may or may not have been instructed in this directive, either in formal training or by his father. Even if Omar Khadr had not, the defendant had been around a number of Al-Qaeda operatives for almost six months when he retracted his confession. Given that Omar Khadr acknowledges that peers were prevailing upon him to retract his confession, these instructions below would be relevant to how he would retract this confession:

Lesson 17: Interrogation and Investigation

When taken to the prosecution office, the brother should do the following:

- a. He should, prior to questioning and whether or not he has injuries, ask the prosecutor or his representative to be seen by the medical examiner.
- b. He should, when the questioning begins, ask that evidence of his torture be entered in the report proceedings.
- c. He should, prior to the start of the questioning, ask that an attorney be present with him during the questioning process. He should mention the attorney by name.
- d. He should ask for food.
- e. He should deny all information [accusations] about him by the prosecution representative. He should claim that the interrogation apparatus has fabricated those accusations and should deny his connection to anything obtained against him.

f. The brother may have to confess under pressure of torture in the interrogation center. Once in the prosecution center, however, he should say that he was tortured, deny all his former confessions, and ask that the interrogation be repeated.

Lesson 18 Prisons and Detention Centers

1. At the beginning of the trial, once more the brothers must insist on proving that torture was inflicted on them by State Security [investigators] before the judge.
 2. Complain [to the court] of mistreatment while in prison.
 3. Make arrangements for the brother's defense with the attorney, whether he was retained by the brother's family or court-appointed.
 4. The brother has to do his best to know the names of the state security officers, who participated in his torture and mention their names to the judge. [These names may be obtained from brothers who had to deal with those officers in previous cases.]
 5. Some brothers may tell and may be lured by the state security investigators to testify against the brothers [i.e. affirmation witness], either by not keeping them together in the same prison during the trials, or by letting them talk to the media. In this case, they have to be treated gently, and should be offered good advice, good treatment, and pray that God may guide them.
 6. During the trial, the court has to be notified of any mistreatment of the brothers inside the prison.
 7. It is possible to resort to a hunger strike, but it is a tactic that can either succeed or fail.
 8. Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison [according to what occurred during the investigations]. The importance of mastering the art of hiding messages is self evident here.
- When the brothers are transported from and to the prison [on their way to the court] they should shout Islamic slogans out loud from inside the prison cars to impress upon the people and their family the need to support Islam.
 - The brothers should create an Islamic program for themselves inside the prison, as well as recreational and educational ones, etc.
 - The brother in prison should be a role model in selflessness. Brothers should also pay attention to each others needs and should help each other and unite vis a vis the prison officers.

- The brothers must take advantage of their presence in prison for obeying and worshipping [God] and memorizing the Qora'an, etc.

This is in addition to all guidelines and procedures that were contained in the lesson on interrogation and investigation. Lastly, each of us has to understand that we don't achieve victory against our enemies through these actions and security procedures. Rather, victory is achieved by obeying Almighty and Glorious God and because of their many sins. Every brother has to be careful so as not to commit sins and everyone of us has to do his best in obeying Almighty God, Who said in his Holy Book: "We will, without doubt, help Our messengers and those who believe (both) in this world's life and the one Day when the Witnesses will stand forth."

May God guide us.

Omar Khadr responded to the revelation of the bomb-making video on approximately August 31, 2002, and then to Interrogator 11 as he hoped to return to Canada and was undertaking interviews in which little value was being placed on the value to the prosecution of his case, but more to the value of other interventions with actionable intelligence.

Subsequent to Omar Khadr's decision to retract his confession in February, he advanced a number of assertions of torture, after he asserted that his Canadian visitors were screaming at him. It took only one visit from the screaming Canadians for Mr. Khadr to assert he was being tortured.

The defense psychologist who later interviewed him, Dr. Porterfield, stated that only after 65 hours with her did he begin to tell her about the torture. That it would take a defendant 65 times as long for a defendant to reveal psychopathology to a trained mental health professional than it would a diplomat speaks dimly of the relevance of Mr. Khadr's symptoms to science.

A number of accusations assert that Mr. Khadr's security classification rendered conditions harsher for him after he retracted his statements. But he did not offer self-incriminating statements, post 2003, under such circumstances. So this is irrelevant to assertions of coercion. Coerced into what?

In our interview, Mr. Khadr referred me to the affidavit of his case, with the ennui of a person who did not want to be bothered with the details. He was more annoyed that I would take the time to explore what was asserted, with great consternation, in his affidavit.

There is no evidence for pain medicine being withheld in 2002 or 2003 at the time of his interrogations at issue here. But for those times when pain was documented to be most severe, the defendant did not offer any self-incriminating statements. Moreover, the defendant did not offer self-incriminating statements in the period in which he alleges through his (attorneys prepared affidavit) rough treatment of changing his bandages, a charge that has been denied by the medical staff.

The defendant, in his affidavit, suggests that he cannot focus on matters outside of his pain. His functional history demonstrates this to be a fiction. Mr. Khadr lied even about his name in the first interview, so his medical condition did not prevent him from being self-serving.

Although the defendant asserts in his affidavit that Americans pulled him off a stretcher, he did not offer any self-incriminating statement concurrent with his being hospitalized in 2002. The defendant asserts that he was forced to sit up in stretcher to create pain from wounds. Medical staff has testified that interrogators were not allowed in the hospital, and that no attempts to gather information were part of his treatment. Records reflect an effort to evaluate and treat the defendant in a way that was indistinguishable from how military personnel were treated.

Although the defendant charges in his affidavit that jailer brought barking dogs by him while his head was covered with a bag, he does not assert that he offered self-incriminating statements at that time. The defendant states in his affidavit that he was terrified when a bag was placed over his head. But he offered no self-incriminating statements in 2002 or 2003 in response to such alleged activities.

Although the defendant charges in his affidavit that cold water was thrown on him, there is no history that he offered self-incriminating statements in 2002 or 2003 in response to such an experience.

The defendant was noted to have his hands tied in the sally port. There is no evidence that he offered a self-incriminating statement in 2002 after that occasion.

The defendant reportedly volunteered for duties at Bagram, keeping busy with these activities and enjoying them. He asserts in his affidavit however, that he was forced to clean the floor with a brush and dry it with towels until dawn. Furthermore, the defendant contends that he was forced to carry heavy (5 gallon) buckets of water which hurt his left shoulder. No self-incriminating statement from 2002-3 arose which was attributable to his water carrying.

Despite reports of being threatened to have him raped in an American prison, or to be sent to Syria, Jordan, Afghanistan, Israel, or Egypt, where he would be raped by any

suggested particular soldier, there is no record that the defendant offered his 2002-2003 self-incriminating statements in response to any such admonishing.

The defense asserts that Mr. Khadr endured 42 interrogations in 90 days. He did not implicate himself in bomb-making activities until being shown the video, after many interviews. Beginning with the next interview, he offered very little additional information until the concluding interviews of actionable intelligence by Interrogator 11. Despite defense assertion that Mr. Khadr was afraid of the “skinny blond guy,” he did not offer self-incriminating statements to him, and did not refuse to return to their interviews out of fear of him – as other detainees had with different interrogators.

The defense asserts that Mr. Khadr was withheld bathroom privileges and forced to urinate on himself, and endured extremely bright lights and pain to both eyes. None of these reported circumstances are implicated in his self-incriminating statements in 2002 and 2003.

None of the self-incriminating statements of 2002 and 2003 arose in a setting in which Mr. Khadr was without food/water, or sleep, and none were attributable to nightmares he had. Evidence that interviews began at 8 AM reflect that self-incriminating statements in 2002 and early 2003 did not result from an effort to interview him when sleep deprived.

Furthermore, the defendant started a hunger strike which he used to manipulate the addition of three ensures and double portions to his diet. Personnel would not have so capitulated were there to be a movement to deprive him of food.

The defense asserts that Omar Khadr was forced to pass out three or four times after arrival at Gitmo by pressure on face and chest. There is no indication that he mentioned any of this to an interrogator, 11, to whom he was very close. Nor is there any indication that he offered self-incriminating statements as a result of this claimed treatment.

The defense claimed to have been isolated at Gitmo, and housed in a room as cold as a refrigerator, and left alone in an interview room for ten hours. No self-incriminating statements were followed by changes in housing or interview room conditions. Closer inspection of the Gitmo interview rooms reveals that they are far more comfortable than interview rooms found in American jails, and resemble day rooms/visitor rooms in many hospitals.

The defense asserts that Omar Khadr was told he would never get out of Guantanamo, that his life was in his hands, and to get ready for a miserable life. The available record reflects that Mr. Khadr was hopeful that Canada would repatriate him, and that he was

participating with Interrogator 11 to complete his processing, in the hope that Canada would bring him back. Apart from this assertion being contradicted by available evidence, there is no indication that self-incriminating statements offered in 2002 and 2003 originated from such reported statements.

The defense asserts in an affidavit that his hands were cuffed behind his legs and maintained until he urinated on himself. The defendant further asserts that guards poured pine oil on him and dragged back and forth in the mixture on floor, then reportedly returning him to his cell without a change of clothes. In the defendant's record, On June 15, 2003 Second Lieutenant Enrique Russe noted that Omar Khadr was given a container to urinate in his cell, and he adamantly insisted to be taken to the bathroom. When guards refused, he reportedly urinated on the floor.

Those are very different appraisals. Dr. Xenakis, in his notes, reports that Mr. Khadr urinated on a picture of his family, then ended one of their meetings by affectionately laying his head next to that picture. Urinating was, in that instance as in the above report, a voluntary expression of anger.

The defendant's affidavit asserts abuse that includes despite being grabbed by guards by pressure points, being made to sit down and stand up while shackled and on floor, being dropped to floor by arms and neck, short shackled and laughed at, kned in the thighs, and experiencing pain as an 11 on a scale of 1-10. None of these reported incidents are borne out by medical records, which reflect prompt attention to the defendant's concerns. Likewise, there is no indication that the self-incriminating statements offered in 2002 and 2003 accompanied or followed circumstances like these.

Among other things, Omar Khadr's affidavits assert that he was placed in stress positions. It is possible that the defendant received endurance training from al-Qaeda. More evidence is available for his having taken martial arts. And, he is diagnosed in the record as having joint laxity. Again, the defendant was one to bring any number of large and small complaints to detention facility staff. He has not done so with respect to injuries attributable to stress positions. Furthermore, medical records reveal that Omar Khadr continued to play sports even when advised by doctors to rest his injuries.

Omar Khadr's medical and corrections record presents a record of ongoing contact with others, in which he makes his needs known and has his needs met – often and no matter how small. There is no evidence that he was bothered by physical restraint of interview or was forced at any time to rest because of how interviews had physically injured him.

What distinguishes this case from numerous disputed false confession claims brought to my attention is that customarily, complaints are levied by defendants and denied by law

enforcement, and abuse may be impossible to track over a short period of time. However, in this Khadr matter, the multiplicity and quantity of allegations span an extended period.

Furthermore, a review of the Gitmo medical file of Omar Khadr reveals an attentiveness, responsiveness, professionalism, and documentation far superior to traditional corrections health care. The quantity of documentation available is an informative perspective of numerous dispassionate health professionals whose accounting of their care resembles many hospitals. Scrutiny of these files demonstrates that staff took a non-judgmental, serious, and sensitive approach to Mr. Khadr's concerns. And that he knew this.

The records also include exceptional reaction to his concerns. Mr. Khadr's concerns about pain from shrapnel in his feet drew a standing order for special comfort socks. The defendant made three medical visits alone for his dandruff. Mr. Khadr sought to have his ears flushed, wart removed, sought out creams for dry skin, and alternatively, for acne. Staff provided him with mouthwash, special toothpaste, cushioned feet inserts, and a head band for glasses. Yet he registered no concerns for insomnia or nightmares.

Medical personnel referred him for physical therapy and provided him with antibiotic coverage, addressed any needs for pain from his shoulder and attended to drainage from his wounds.

The defendant became shrewd about how to manipulate these attentive support services. He had no need or use for psychiatry, even to the end of being dismissive, but would use behavioral health services to obtain what he could not from medical services, such as creams and other comforts. At times his items were restricted, such as when he "misused" his Selsun Blue shampoo. The defendant's diet was adjusted to accommodate his desire for juices and salads.

Records also reflect discussions of the risks and benefits of contemplated procedures. His record shows repeat CT and MRI studies, and workups for a variety of exotic autoimmune conditions. The risks of vitrectomy, for example, leading to sclerosis and blindness in his functioning eye dissuaded eye surgery. He continues to have an eye examination follow-up every three to four months.

Extensive notes from medical records repeatedly document his pain self-appraisal. Repeatedly, during his hospital stays, Mr. Khadr denotes his pain as "2," "3," "0" on a 1-10 scale. There is no evidence that Omar Khadr was asking staff for pain meds and he was refused, or termed drug-seeking. On the contrary, staff would offer pain medicine and the defendant would not need it because he was not in pain.

For all of his assertions about untreated pain, Omar Khadr's medical records show he was doing 100 pull-ups at a time, pushups and dips, and exercising daily, and asked for shoes that would enable him to run six miles a day instead of three.

Medical records reflect that Omar Khadr has had, on call, prescription options for fourteen different meds as needed, including seven relating to pain treatment (Tylenol, Motrin, Naprosyn, Celebrex, Morphine, steroid injection, analgesic Ben Gay balm). In our interview, Mr. Khadr asserts that he did not like to take pills.

What is remarkable, on meeting Mr. Khadr, is how relaxed and vigorous he looks for a man who asserts all of the above. How does one synthesize the apparent contradiction?

The medical chart, supplemented by corrections records, is a remarkable departure from the defense affidavit, and reveals:

- 1) Mr. Khadr has and continues to receive medical care better than most American citizens.
- 2) That medical care is partly responsible for his vigorous and well-adjusted presentation despite several years in custody, battle injuries, and injuries stained with his vigorous sports schedule.
- 3) Mr. Khadr's assertions are so incompatible with the records composed by those uninvolved in the legal proceeding, as well as documentation of incidents, and his correspondence through the Red Cross that notes his doing well.
- 4) The affidavits, so sensational and incompatible with evidentiary foundation, do reflect fulfillment of al-Qaeda directives for how to handle interrogation and custodial settings.
- 5) The affidavits prepared are so sensational and incompatible with evidentiary foundation that they reflect a legal strategy to advance Mr. Khadr's case by grafting experiences from other cases in order to distract the courts attention from confessions that bear no resemblance to proven false confessions
- 6) Omar Khadr's psychiatric strengths and vulnerabilities and his decision to confess bear no resemblance to the ornaments of the affidavit, nor are they reflected in any study of juveniles or false or disputed confessions.

Very truly yours,

Michael Welner, M.D.